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LAW LIBRARY JOURNAL

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A FEW NOTES ON THE DEPARTMENT OF JUSTICE LIBRARY*

BY MATTHEW A. MCKAVITT

Director of Libraries, Department of Justice

The Department of Justice Library contains about 75,000 volumes, the majority of which are law books. About 80 per cent of the volumes are legal but as to titles approximately 50 per cent are non-legal. The non-legal subjects are in the allied fields of biography, history, economics, finance, etc., and, of course, general reference. The collection includes acts of Congress and the various state legislatures, the various federal and state court decisions, and their digests and citators, the rules, regulations and decisions of administrative agencies, principally federal, legal treatises, legal encyclopedias and annotated reports, legal and allied periodicals, legal dictionaries, collections of laws on special subjects, records and briefs of United States Supreme Court cases, and government documents, particularly federal, of which we use the *Congressional Record*, House and Senate reports, and hearings, for legislative histories. We have also the important English and Canadian laws, decisions, digests and encyclopedias of the law, which make a considerable collection in themselves. Works on legal bibliography and library science have an important place in the library. Some special sets of governmental material are the *Handbook of Federal Indian Law*, the reports of the Temporary National Economic Committee, the Dies Committee hearings on un-American activities, the United States Attorney General's Crime Conference *Proceedings*, the report of the Attorney General's Committee on Administrative Procedure, and the Wickersham Crime Commission reports.

We also subscribe to some of the looseleaf legal services of Commerce Clearing House and Prentice-Hall, the *Moody's Manuals*, Poor's *Directory of Directors*, and *Corporation Records*.

Perhaps you would be interested in knowing that besides the three principal offices, that of the Attorney General, the Solicitor General, and the Assistant to the Attorney General, there is a War Division, consisting of three units: Special War Policies, Alien Enemy Control, and Alien Property; there are the Anti-Trust, Tax, Claims, Lands, Criminal and Customs Divisions. There are the investigative and prisons bureaus, the immigration and naturalization service and a Pardon Attorney. Paroles are granted by the United States Parole Board. Closely related also to the Bureau of Prisons is the Federal Prison Industries, Incorporated. Of course there is the usual Administrative Divi-

* This talk was delivered before the library staff of the Social Security Board, April 23, 1943.
Cf. McKavitt, *The Library of the Department of Justice* (1939) 32 L. LIB. J. 271.

sion which handles personnel, the offices of the United States Marshals, and services.

You can gather to a certain extent from the titles of these various Department divisions, what type of books we must purchase.

Although the Librarian cannot attend Division staff meetings, which would help him know what books to purchase, he and his assistant read the book reviews, particularly in the law reviews, examine second-hand book lists, and, of course, weigh the value of the flood of advertisements of new books. The newspapers, requests from Divisions, and a sixth sense are helpful. There are so many legal and economic experts in the Department that the Librarian can always get an opinion as to the need and probable value of a book.[1]

It should be pointed out that there is a collection of books, in one type of order or another, in each Division but they are mostly basic federal law books such as the *Statutes at Large* (Congressional enactments), *United States Reports* (Supreme Court decisions), *Federal Reports* (the decisions of the United States Circuit and District Courts), and particular reports which the Division needs most, such as *Court of Claims Reports, Board of Tax Appeals Reports, Interstate Commerce Commission Reports, Lands Decisions,* etc. There is some specialization but most of the state material and other material is borrowed from the Main Library. There are over 30,000 volumes in these branch libraries.

Of course we are mainly a reference library. During the last fiscal year 243,129 volumes were used in the main library, whereas we circulated but 23,913 books and pamphlets. We borrowed 1770 books and loaned 263 volumes to other libraries.[2]

The Library is in the shape of the letter T. Originally the centers of both the post and cross-bar were vacant, giving the library a spacious appearance; because of the crowded wartime conditions, each now contains double stacks. In that part represented by the post of the T, is the main reading room containing the federal material on one side, and the general legal reference on the other. On each side of this large well-lighted-by-daylight room are five alcoves, each containing a table and six chairs. These tables must be cleared several times a day because, as mentioned, the principal federal and general legal reference literature is shelved here.

In the center of the reading room are located the general reference books—Encyclopedias, Who's Whos, foreign dictionaries, etc. At the juncture of the post and the cross-bar of the T is the Main Desk where loan records and the Visitor's book are kept, where charging is done, where announcement of telephone calls is made (we simply call the person's name once on the microphone), where the current legal periodicals, and a few general reference books such as the *Lincoln Library*, current *Who's Who in America, Martindale-Hubbell Legal Directory* are kept, and where two telephones jangle constantly. In the cross-bar of the T is also found the L. C. classified section which would ordinarily extend into another room off the corridor, if it had not been taken for a war unit.

At the top of the cross-bar of the

[1] *See* McKavitt and Boyd, *We Look at the Law Library* (1940) 33 L. Lib. J. 85-86.

[2] *See* Annual Reports of the Attorney General since 1938.

T are the alcoves, with open balconies above. These alcoves, 14 in number, contain the state material, and the usual tables and chairs are in each alcove. The balconies contain the Document Series, which as you know, is a very wonderful collection of Congressional House and Senate Reports and Documents, annual reports, and valuable miscellaneous reports and documents on a multitude of subjects.

Outside the alcoves in the cross-bar, may be found the state material continued. In the center of this long corridor, which takes 102 steps to stride its length, are also to be found the legal treatises.

On the lower side of the cross-bar are shelved the numerous legal periodicals and also magazines containing material of an allied nature, such as *The Survey Graphic, Public Administration, Quarterly Journal of Economics, The Jurist, Public Opinion Quarterly, American Economic Review, Annals of the American Academy of Political and Social Science, Review of Politics, Foreign Affairs, Political Science Quarterly, Journal of Politics,* and all the library periodicals.

There are over 400 legal periodicals in the library. They are in considerable demand because if a reader finds a pertinent article or note he can feel certain that somebody has saved him considerable research. The editors of law reviews make good research lawyers and an editorship on the *Harvard Law Review* practically guarantees a well-paid legal post.

Off one end of the corridor or cross-bar are the staff rooms. Much of this space, as well as the large stack room where treatises and L. C. classified material were shelved, has been taken away from us for the duration. This presents the difficult problem of crowded desks, a condition new to us, but an old one in too many libraries.

It should be added that in the main reading room, circling it, are located the famous Maurice Sterne murals, depicting "Man's Struggle for Justice."

Outside the main door of the Library, which is located at the bottom of the post of the T, are placed the Biddle Murals showing scenes before and after social justice has been attained. Here are also found two murals by Curry, one a rather dramatic lynching scene showing a judge swearing in the mob as deputies to forestall the death of a man crouched at his feet. The other Curry mural is a picture of the plains showing the prairie schooner pioneers fighting their way to the West through the bands of Indians.

We have our own law classification scheme with greatly-detailed schedules built on the "skeletonized scheme" of the Library of Congress. There are four main groups: Federal, State, Foreign, and Legal Miscellany. The legal collection is arranged by country, using the abbreviation of the name of the country in the call number and subdividing into nine classes:

0 Constitutions
1 Session laws
2 Collected Laws
3 Codes
4 Laws on a special subject
5 Court reports
6 Digests
7 Text books
8
9 Local

Special classes of legal material which do not conform to a local classification are provided with a notation under K which, as you know, is the L. C. Classification symbol for law. All non-legal

material is classified by the L. C. system.

Legal textbooks, except the extensive collections of International Law and Constitutional Law which are classified in J, are arranged alphabetically by author.[3] Periodicals are arranged alphabetically by title.

An examination of the accumulation of reference questions of the last ten days reveals the following: A question concerning the publisher and cost of a periodical; the meeting time and place of a state court of Chancery; the definition of new words—for instance the words "mukluks" (Arctic snowshoes) and "bibliotherapy"; a list of all letters by a certain writer in the *New York Times;* biographical material on a famous international personality; a certain type of game law of Canada; the name of a state court reporter; the name of a certain district court clerk; many legal problems involving reference to the United States *Statutes at Large* or the United States *Code* and its annotations; the proper title of a Chief Justice and his associates of a certain great nearby state; the name of a district Immigration and Naturalization director of a prominent immigration center; a legal question relative to the certification of papers in a certain selective service case; questions relative to certain testimony before the Dies Committee; a procedural question relative to *duces tecum,* a certain species of writ, meaning that the person summoned to court should bring a document or certain papers with him; and an inquiry about a speech by Herbert Hoover which turned out to be an article by the Director of the F. B. I.[4]

[3] *See* Orman, *Law Library Classification* (1941) 11 LIBRARY QUARTERLY 210; HICKS, MATERIALS AND METHODS OF LEGAL RESEARCH (3rd ed. 1942) 341-348.

[4] *See* McKavitt, *The Layman and the Law Library* (1940) 33 L. LIB. J. 324.

Of course there is a great deal of work requiring daily search of the *Congressional Record* and House and Senate reports, documents and hearings; much time is spent instructing people in the use of books, particularly looseleaf services; there is much time consumed in work with current general and legal periodicals, instruction in the use of Citators, in unravelling mis-cited cases, and in identifying publications in order that they may be requested correctly from the Library of Congress.

In view of the fact that there are on an average of 20 attorneys from other Government agencies in the Library daily, we receive reference problems of a different color from those we might receive ordinarily. This increases the knowledge and resourcefulness of the reference department, although it means a considerable increase in work.

We catalog[5] on an average of 5,000 volumes annually, of which over half are new titles—the rest is recataloging—a long-time project as the Library was incompletely catalogued when the present Librarian took over its administration.

We serve approximately 8500 employees, of whom about 700 are lawyers. We ordinarily have fifteen members on the staff. Five of them have library science degrees. Some of the others, including department heads, have acquired, through training and experience, specialized knowledge which makes them valuable employees. All library journals are circulated and the staff members have been taught to consult these and other works on library science when they have a technical problem to solve. As I said recently in my address on the *Library Manual* and scholarship before the Spe-

[5] *See* Fort, *Law Cataloging Manual* (1943) 68 LIBRARY JOURNAL 245.

cial Libraries Association: "Library school training is not absolutely necessary but the practice of sound principles and methods gleaned from books on library science *is* necessary."[6] We have been able to do great things with untrained and inexperienced people. There is no sharp cleavage between the professional and clerical staffs; ability in both is greatly admired and quickly recognized.

There is a good *esprit de corps* among us. We conduct ourselves in an easy but impersonal manner. We realize that each problem solved will later save us time. We know that we are librarians who must serve first, the needs of the Department of Justice, and when not jeopardizing that service, we must assist other agencies because we are all working for the United States Government. Moreover, mutuality of interdepartmental effort pays dividends and is a lubricant that smoothes the way and suppresses friction.

There is a multiplicity of woes I refrain from mentioning. They are more than offset by such pleasant happenings as the news that one of our staff members, now in the air corps, is safe; the reception and good reviews of our *Library Manual*;[7] an occasional letter of appreciation; and the triumph of finding the answer to a difficult problem or the return of a lost book.

Fundamentally, our problems are like your problems. We are all in a truly important but unappreciated service. However, the greatest reward is neither recognition nor monetary gain, but that deep sense of satisfaction which comes from the realization that the job is done well.

[6] *See* McKavitt, *Subject, Method, Scholarship, and the Library Manual* (1942) 33 SPECIAL LIBRARIES 357. *Complete text in* (1942-43) 45 LIBRARY WORLD 71-75; 89-91.

[7] For reviews *see* (1942) 67 LIBRARY JOURNAL 529 (Price); (1942) 35 L. LIB. J. 239 (Rothman); (1942) 33 SPECIAL LIBRARIES 361 (Morley).

CONTRIBUTIONS OF THE COLUMBIA UNIVERSITY LAW SCHOOL LIBRARY TO THE FIELD OF LAW CATALOGING

BY ALICE DASPIT GREENBURG*

For a number of years, former students and fellow librarians have found Miles O. Price and his staff a generous and inexhaustible source of information regarding library methods and practices; and, perhaps partly as a result of these many inquiries, the law library profession has received aids and tools that are unique in the specialized library field.

Owing to the very nature of our work, law librarians must have some knowledge of both library science and our subject, in order to do a creditable job; and most of us have found it necessary to acquire either one or the other after we have undertaken our respective library jobs. Over a period of years, in instituting the course in Law Library Administration and in developing the various aids and tools for the profession, Columbia's Law Librarian and his staff have directed their energies toward assisting law librarians with little or no formal library training, or, on the other hand, with little legal training or familiarity with legal bibliography and terminology. Believing that cataloging is

* On leave of absence as Law Librarian, Louisiana State University. At present a member of the staff of the Legislative Reference Division, Law Library of Congress.

one of the most important and most frequently neglected aspects of law library work, and having proved, in summer classes, his theory that an intelligent person with the use of printed Library of Congress cards and a standard list of subject headings can produce a very creditable job of cataloging, Mr. Price took steps toward the preparation of such tools.

In response to many requests for copies of the Columbia law subject heading list, it was issued in 1939; this was the first such compilation to be made available since that of the Library of Congress, in 1911. This subject heading list has already demonstrated its usefulness in many libraries. Several years ago the compilation of a model catalog for about 15,000 volumes was begun, to satisfy the demonstrated need of many law librarians and catalogers for a tool which would enable them to construct for their own libraries a catalog in accordance with standard library practices.[1] Numbering some 1500 titles—and based upon the lists compiled by Mr. Raymond C. Lindquist, Librarian of the Public Library Commission of New Jersey, and the late Miss Helen S. Moylan, Librarian of the State University of Iowa Law Library—the catalog fulfills two purposes. First, it represents all types of materials found in a well selected law library, and furnishes properly cataloged models for the librarian; second, it catalogs most of the titles found in a library of the stated size. It is now available in book form, in lithoprint. Its usefulness as a source of models for cataloging all types of legal materials, and many basic titles in the small library; as a source of Library of Congress card numbers (90 per cent of the cards are printed Library of Congress cards); and as a book selection tool, cannot be overestimated.

Columbia's latest contribution, Miss Elsie Basset's *Cataloging Manual for Law Libraries,* has recently been published, the culmination of three years' intensive work. Miss Basset had been asked to undertake the project as a result of Mr. Price's experience with his summer classes, and a belief that general manuals, concerned primarily with other types of material, were inadequate for the needs of the law librarian. Indicative of the problem with which the author was faced were the "specifications" furnished Miss Basset: "A simple but sufficiently comprehensive manual relating to every kind of material commonly found in the working law library; special treatment for techniques peculiar to law cataloging; all examples to be from standard legal material; the text keyed to numerous cards so that the user would have no difficulty in finding exactly what she wanted in case of doubt." In addition to a very detailed textual treatment, Miss Basset has included in the appendices various classification schemes, bibliographies, and the assigning of subject headings. It is difficult to conceive of any cataloging problem that could not be solved by the use of this volume. Miss Basset, Supervisor of Cataloging in the Columbia University Law Library, gives ample evidence in her publication of her familiarity with the subject and her years of experience in the field. Many librarians already know her *Cataloging Practices of the Law Library of Columbia University,* which has largely been superseded by the later work.

[1] For a description of the model catalog, see Mr. Price's remarks before the Round Table in Chicago in December 1940 (1941) 34 L. Lib. J.

Although intended primarily as a tool for the cataloger of the small and medium sized law library, its usefulness to large law libraries and to general libraries also is indicated by statements of Miss Katherine Warren of the Yale University Law Library: "This book . . . should be heralded with applause as an important contribution to law library science, for use not only by law library catalogers but also by catalogers of law books in any library";[2] and of Mr. Joseph L. Andrews of the Library of the Association of the Bar of the City of New York, "All those concerned in any phase of administering a law library, whether it be as part of a university, bar association, law office or court house, have in this volume an indispensable reference book which should be considered as a 'must' for their respective libraries."[3]

In 1935, holding a library science degree, having had several years of general library experience, and most of the first year law course, the writer was asked to assume charge of an uncataloged law library of approximately 16,000 volumes, increasing annually at the rate of four or five thousand volumes. With a part time cataloger—library trained, but with no law library experience—the project was started. Looking back upon those years, she believes that half the time, energy, and money spent could have been saved had the Columbia list of subject headings, the model catalog and the cataloging manual then been available. While these publications have been developed by the Columbia Law School Library as a practical and effective answer to the problems of the small and medium sized law libraries, they will be of inestimable value to all types of law libraries, and should contribute more than any other single factor to the increased usefulness and effectiveness of American legal collections. It is not often that the facilities of an institution are made available to so many, and Columbia University is to be congratulated upon the vision of its Law Librarian and its own generosity.

[2] (1943) 36 L. Lib. J. 47-48.
[3] (Feb. 1943) 3 Legist 19.

The following list of publications, for which the Columbia Law Library has been responsible, was compiled by Mr. Joseph L. Andrews, Reference Librarian, Association of the Bar of the City of New York, and appeared as part of his review of Miss Basset's *Cataloging Manual for Law Libraries*:[3]

1933. Schiller, A. Arthur, with the assistance of Elsie Basset. A Catalog of Roman Law and Reclassification in the Columbia Law Library. Law Library Journal 26: 1-10, Jan. 1933.

1933. Basset, Elsie. List of Anglo-American Periodicals. Hicks, Materials and Methods of Legal Research 2d ed. 1933, p. 492-543.

1937. Basset, Elsie. Law Cataloging as a Specialized Field. Law Library Journal 30:499-506, Sept. 1937.

1938. Schiller, A. Arthur. The Reclassification and Supplemental Cataloging of Books in the Columbia Law Library: a Survey. New York, Columbia University Law Library, 1938. 30 numb. leaves. Mimeographed.

1939. Price, Miles O. Subject Headings in American and English Law Used in the Dictionary Catalog of the Columbia University Law Library. Preliminary edition. New York, School of Library Service, Columbia University 1939. 117p. Mimeographed.

1939. Basset, Elsie. Cataloging Practices of the Law Library of Columbia University. New York, School of Library Service, Columbia University, 1939. 22 numb. leaves. Mimeographed.

1941. Price, Miles O. A Catalog for the Small Library. Law Library Journal 34:1-8, Jan. 1941.

1941. Price, Miles O. The Need for a Subject Classification to Facilitate Research in Foreign Law. College and Research Libraries 2:146-50, Mar. 1941.

1941. Pollack, Ervin H. A Supplement with Bibliographical Notes, Emendations and Additions . . . to the Check List of Session Laws compiled by Grace E. MacDonald. Preliminary ed. Boston, National Association of State Libraries, 1941. 48p.

1942. Price, Miles O. A Catalog for a Law Library of 15,000 Volumes. New York, School of Library Service, Columbia University, 1942. 305p.

1942. Basset, Elsie. A Cataloging Manual for Law Libraries. New York, H. W. Wilson Co., 1942. 365p.

Also, unpublished, in typescript:

Basset, Elsie. A Dictionary of Terms in Public International Law. 700 leaves.

Karr, Frances. Subject Headings in the Field of Law; an Attempt at a Uniform List. (M. S. thesis, School of Library Service, Columbia University, 1940) 82 leaves.

EXAMINATIONS BEFORE TRIAL IN NEW YORK*

By LEONARD S. SAXE

Member of the New York Bar

Introduction

There are five principal methods for obtaining proof before trial: 1) Requests for admissions; 2) Physical examinations; 3) Depositions taken outside of the state; 4) Discovery and inspection of papers; and, 5) Last and most important—Depositions taken within the state for use within the state, commonly known as examinations before trial. Judge Shientag in his paper, *The Trial of a Civil Jury Action in New York*, has well said, "The importance of examination before trial cannot be over-estimated."

The Federal and New York Statutes and Rules

The Federal deposition-discovery procedure (discovery being used in its generic sense of *disclosure of facts* and not in the New York technical sense of discovery of papers), contained in Rules 26 to 37 of the Federal Rules of Civil Procedure, became effective on September 16, 1938. This deposition-discovery procedure has been regarded as the "keystone" of the new federal practice.[1] In my opinion, these provisions represent the ideal solution of New York's problems in this field. They are in general, a model of simplicity and effectiveness. In 1934 the New York Commission on the Administration of Justice recommended practically identical provisions,[2] and since then the New York Judicial Council, after a public hearing, has consistently recommended enlargement of the New York practice.[3]

Federal Rule 26(a), so far as relevant, provides that after an answer has been served "the testimony of any person, whether a party or not, may be

* An address delivered May 4, 1943, before the Association of the Bar of the City of New York under the auspices of its Committee on Post-Admission Legal Education. Mr. Saxe's remarks are made as an individual member of the bar and do not necessarily reflect the opinions of the Judicial Council of which he is Executive Secretary.

[1] Pike, *The New Federal Deposition-Discovery Procedure and the Rules of Evidence* (1939) 34 Ill. L. Rev. 1.

[2] Report of the Commission on the Administration of Justice, N. Y. Leg. Doc. No. 50 (1934) 311-342; 6 WIGMORE, EVIDENCE (3rd ed. 1940) §1856a, n., p. 426.

[3] Eighth Annual Report of the Judicial Council (1942), p. 361-373.

taken at the instance of any party . . . for the purpose of discovery or for use as evidence in the action or for both purposes." To anticipate and render ineffectual any judicial construction which would limit the efficacy of this Rule, it was provided in Federal Rule 26(b):

> . . . the deponent may be examined regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether relating to the claim or defense of the examining party or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts.

There are also provisions protecting against harassment.[4] The Federal Rules thus freely permit the taking of depositions of a witness as well as of a party.

The New York statute, contained in section 288 of the Civil Practice Act, differentiates between the taking of depositions of "parties" and "witnesses." The first sentence of section 288, relating to parties, reads as follows:

> Any party to an action in a court of record may cause to be taken by deposition, before trial, his own testimony or that of any other party which is material and necessary in the prosecution or defense of the action.

With respect to witnesses, section 288 reads:

> Any party to such an action also may cause to be so taken the testimony of any other person, which is material and necessary, where such person is about to depart from the state, or is without the state, or resides at a greater distance from the place of trial than one hundred miles, or is so sick or infirm as to afford reasonable grounds of belief that he will not be able to attend the trial, or other special circumstances render it proper that his deposition should be taken.

[4] FED. RULES CIV. PROC., Rules 30(b) and 30(d).

This New York statute in its language, except with respect to witnesses, appears to be almost as unlimited as the Federal Rule.

Although the Federal Rule provides that the *taking* of an examination of a party or a witness shall be virtually without restriction, the provisions as to the *use* of depositions upon the trial, as set forth in Rule 26(d), are substantially similar to those of New York, as set forth in Civil Practice Act section 304. In a word, these are that the deposition of a witness may not be read upon the trial unless it is shown that the witness cannot be produced because of unavailability, either actual or as defined in the Rule, whereas the deposition of a party may be read, if competent, even if the party is present in court. In other less important aspects, the Federal provisions would seem to be substantially similar to those of New York.

The very liberal practice, in accordance with the plain wording of the Federal Rules, has been such that many attorneys now resort to the federal courts in preference to the state courts wherever possible.

Under the Federal Rules all restrictions as to taking the examination under the traditional procedure as we know it in our New York state practice have been swept away. The Gordian knot of complications and judicial restrictions which ties the hands of New York litigants was cut by the Federal Rules. The affirmative burden of proof rule is gone. The examination of a witness as a matter of right is permitted. Names of witnesses may be obtained. There is no necessity to itemize the matters upon which a person is to be examined.

Metaphysical niceties of form which cause so many New York Special Term judges to reject notices for saying "as to," "whether or not," "concerning," and for paraphrasing allegations of the complaint, thus including conclusions of law, are avoided. There is no question as to whether the examination will bring forth hearsay or parol evidence, as the examination is permitted for the purpose of disclosure.

Although the newcomer to this field might think that a knowledge of the general state-wide practice, as set forth in the Civil Practice Act, would be all that he needs, the experienced lawyer knows that he must be familiar with many different sets of rules. Practice under the Surrogate's Court Act is a thing apart; practice under the Court of Claims Act is a specialty; practice in the New York City Municipal Court, and other courts of local jurisdiction throughout the state, requires attention to particular statutes. Although the general practice is set forth in the Civil Practice Act, an attorney, as a practical matter, must be familiar particularly with the decisions of the Appellate Division of the Department in which his case is brought, since all four of the Appellate Divisions differ in varying degrees in their interpretations of the Civil Practice Act provisions.

The confusion and amorphous uncertainty in the decisions make examination before trial the most chaotic part of New York practice. These inconsistencies are bad enough in the reported cases. Matters are still worse among the unreported cases. There is little agreement on practice points among Special Term judges in the same Department, not to mention differences between them in different Departments.

Since I am attempting, however, to bring some order and pattern out of chaos, I cannot illustrate the "wilderness of single instances," in the welter of cases. I am thoroughly cognizant that for almost every statement I may make as to the condition of the law on a particular point, one would doubtless be able to cite a case holding to the contrary.

Owing to limitations of time I will confine myself in the main to the existing practice and matters of moment or interest to the practitioner.

General Summary of the New York Cases

A bird's-eye view of the condition of the New York law on examination before trial, in perspective, is this:

The confusing restrictions and differences in New York are attributable to a large extent to the judicial interpretations of the word "material" and the word "necessary" as used with respect to both parties and witnesses, and the words "special circumstances" as used with respect to witnesses.

The Third Judicial Department is the most liberal of all the Departments. For all practical purposes it permits an examination to the same extent as would be permissible under the Federal Rules, namely, as of right of any person at all on any matter relevant to the issues under the pleadings. The Third Department is particularly in advance of the other Departments in that it permits an examination regardless of who has the affirmative burden of proof under the pleadings.

The Fourth Department may possibly be less liberal than the Third Department with respect to the affirmative burden rule, for it has not yet clearly decided that it will reject the affirmative burden rule in tort cases.

The Second Department is slightly less liberal than the Third and Fourth Departments in that it respects the affirmative burden rule and usually only allows an examination upon the affirmative under the pleadings.

The First Department is to all intents and purposes still following the views it held under the Code of Civil Procedure. It does construe the word "necessary" as meaning merely needful with respect to commercial actions, as in those cases knowledge on the part of the examining party is held no bar to an examination. But, on the other hand, the First Department construes the word "necessary" as meaning indispensable, in many tort cases, and if the examining party has any knowledge or any means of obtaining knowledge he may not obtain an examination in such cases in the First Department.

With respect to witnesses, the Second, Third and Fourth Departments are liberal in permitting the examination of a witness under the "special circumstances" clause, for example when the witness is shown to be unwilling or hostile or reluctant or likely to prove so, or when in any way the examination of the witness would facilitate the trial. The First Department still insists that to obtain the examination of a witness, it must be shown that the witness will be unavailable at the trial or, on rare occasions, that the examination of the witness is vital.

Possibility of Obtaining Uniformity Through the Court of Appeals

It is impossible to obtain uniformity in the several departments with respect to the affirmative burden rule or the scope of the examination, because the Court of Appeals in 1925[5] and again in 1933[6] held that these matters reside in the discretion of the lower courts, thus presenting questions of fact not subject to review in the Court of Appeals.

However, in so far as the rulings of the Appellate Divisions limit the discretion of Special Term judges by setting up a general rule which, in effect, is the converse and negation of discretion, and which has crystallized into a hard and fast rule of law, it is possible that a question of law is now presented which would give the Court of Appeals power to decide, and thereby render the practice uniform throughout the state.[7]

Restrictions on Examinations Before Trial in New York

1) The Affirmative Burden of Proof Rule

The restriction most generally imposed by the courts is the burden of

[5] Middleton v. Boardman, 240 N. Y. 552, 148 N. E. 701 (1925), *affirming* 210 App. Div. 467, 206 N. Y. Supp. 725 (2d Dep't 1924); *but see* Drake v. Herrman, 261 N. Y. 414, 185 N. E. 685 (1933).

[6] Public National Bank v. National City Bank, 261 N. Y. 316, 185 N. E. 395 (1933).

[7] Goodman v. Stein, 261 App. Div. 548, 26 N. Y. Supp. (2d) 169 (1st Dep't 1941), in which the majority opinion begins, "Although the *rule* is established in this department." [Italics supplied.] In Moffatt v. Phoenix Brewery Corp., 247 App. Div. 552, 288 N. Y. Supp. 281, 283 (4th Dep't 1936) Judge Edgcomb said, "*A rule of law, however, has been adopted in this and other departments* which limits the issues which may be inquired into on an examination of this character to matters necessary to be proven to entitle a plaintiff to make out his cause of action, or a defendant to establish an affirmative defense." [Italics supplied.]

With respect to discretion as that of the Special Term, *see* Uterhart v. National Bank of Far Rockaway, 255 App. Div. 860, 7 N. Y. Supp. (2d) 509 (2d Dep't 1938); *see also* Pierce v. Morris, 192 App. Div. 502, 505, 182 N. Y. Supp. 132, 135 (4th Dep't 1920); Jenkins v. Putnam, 106 N. Y. 272, 12 N. E. 613 (1887); Combes v. Maas, 209 App. Div. 330, 204 N. Y. Supp. 440 (3d Dep't 1924).

proof rule which limits an examination before trial to those matters upon which the examining party has the affirmative burden of proof under the pleadings. The rule is a carry-over from the traditional practice of the Court of Chancery as it existed before 1848.

With the advent of the Civil Practice Act, the Third Department practically abolished the affirmative burden doctrine,[8] and in 1942 it went so far[9] as to reverse Special Term which had refused an examination of the plaintiff in an accident case and directed his examination.

The Fourth Department has frequently disregarded the affirmative burden doctrine[10] although not in tort cases.[11]

The First and Second Departments adhere to the burden of proof rule unless extraordinary or unusual circumstances require its relaxation.

Defendants have occasionally endeavored to plead as an affirmative defense what could have been proven under a denial in an endeavor to obtain an examination of a plaintiff,[12] but the courts have held that a defendant cannot obtain an examination by such a device.[13]

The Federal Rule, as we have seen, expressly negatives the New York affirmative burden of proof rule and provides for a complete mutuality of examination in all types of actions. Defendants' attorneys apprehended prejudice to the defendants by this change, but experience has shown their fears unfounded and that mutual disclosure aided just results.[14]

[8] Eagle Picher Co. v. Mansfield Paint Co., 201 App. Div. 223, 194 N. Y. Supp. 386 (3d Dep't 1922).

[9] Stiles v. Davis, 265 App. Div. 985, 38 N. Y. Supp. (2d) 579 (3d Dep't 1942). *See also* Watchtower Bible Tract Society Inc. v. Town of Lawrence, 265 App. Div. 984, 38 N. Y. Supp. (2d) 621 (3d Dep't 1942).

[10] Public National Bank v. National City Bank, 261 N. Y. 316, 318, 185 N. E. 395 (1933); *see also* Collins v. Matthews, 260 App. Div. 904, 24 N. Y. Supp. (2d) 133 (4th Dep't 1940).

[11] Fritsch v. Central Trust Co., 262 App. Div. 551, 30 N. Y. Supp. (2d) 934 (4th Dep't 1941).

[12] Ragland, Discovery Before Trial (1932) 263.

[13] Kipe Offset Process Co., Inc. v. Trinity Church, N. Y. L. J., March 3, 1942, p. 930, col. 5 (Sup. Ct. N. Y. Co., Eder, J.); *Cf.*, Brown v. Bedell, 234 App. Div. 90, 93, 254 N. Y. Supp. 215, 219 (1st Dep't 1931).

2) Restrictions on a General Examination in Certain Tort Cases in the First Department

The First Department does not permit a general examination in certain types of tort cases, the most important of which is negligence. It should be understood that although reference is being made solely to negligence cases, such reference is equally applicable to other types of tort actions in which the First Department does not permit a general examination.

There is nothing in the statutes which requires or justifies different treatment for different types of actions. As recently as 1940, in *Rucker* v. *Board of Education*,[15] Judge Finch said, ". . . the sections of the Civil Practice Act providing for an examination before trial make no division based upon the subject-matter of the suit but deal only with the parties [persons] to be examined."

What then is the explanation for the limitation of general examinations in certain tort cases in the First Department? The sole authority for limiting a general examination is the interpretation of the phrase, in section 288, reading, testimony "material and necessary in the prosecution or defense of the action." In negligence actions the First Department interprets the word "necessary" to mean "indispensable," and de-

[14] Conboy, *Depositions, Discovery and Summary Judgments*, 61 A. B. A. Rep. 460 (1936), where an interesting discussion in favor of mutuality of discovery is presented. *See* Ragland, *op. cit.*

[15] 284 N. Y. 346, 349, 31 N. E. (2d) 186, 188 (1940).

nies a general examination unless "unusual circumstances" require it, whereas in commercial actions it interprets that word as meaning "needful" or "helpful" and grants an examination of parties almost *pro forma*.

Until the case of *Goldmark* v. *U. S. Electro-Galvanizing Co.*[16] in 1906, the General Term and Appellate Division of the First Department in all cases had construed the word "necessary" as meaning "indispensable" and had refused to grant a general examination to a plaintiff seeking to examine a defendant unless it was shown that "he had exhausted other sources of information without getting sufficient evidence of the facts"[17] material and necessary to prove his cause of action.

In the *Goldmark* case, *supra*, an action for commissions, an examination of the defendant was allowed for the first time without showing that no other proof was obtainable. Judge Ingraham, writing the opinion for the court, said:[18]

> *The statute does not require that it shall appear that the fact sought to be proved cannot be proved by other witnesses*, but it authorizes a party to take the deposition of his opponent when his testimony can prove the fact which he desires to establish. [Italics supplied.]

Judge Gaynor of the Appellate Division in the Second Department, inspired by the about-face of the First Department in the *Goldmark* case which he cited, said:[19]

> The courts have no power or right to set up other requirements. The code provisions are plain. They were designed for a useful and sometimes necessary purpose which should not be frustrated but served. The administration of justice is best served by the revelation of the truth, not by concealment and surprise. A lawsuit is not a game for sharp advantages. Only good can come from bringing out the facts. It is not these provisions that are complex, but varying and contrary judicial opinions which have construed them and assumed to curtail them. These decisions are no longer precedents. We have come back to the simple proposition that a party to an action is entitled to and should have this examination of another party thereto who has knowledge of facts material to the issue, for use on the trial.

But Judge Gaynor and the bar were not correct in believing that the Appellate Division of the First Department had let down the bars as fully as the *Goldmark* decision indicated. In 1912,[20] the Appellate Division of the First Department denied a general examination in an automobile negligence case, although it granted the examination as to the operation and control of the defendant.

With the adoption of the Civil Practice Act in 1920, the Second, Third and Fourth Departments changed their general views concerning the granting and scope of examinations before trial, and held that the Civil Practive Act extended and liberalized the taking and the scope of such examinations. But the First Department interpreted the statute, which had substantially repeated the statutory language of the Code of Civil Procedure, as changing only the procedure for taking an examination; that is, under the Code of Civil Procedure an examination was obtainable only by order, whereas under the Civil Practice Act, the examination might be obtained either by notice to examine or by application for an order. The First Depart-

[16] 111 App. Div. 526, 97 N. Y. Supp. 1078 (1st Dep't 1906).
[17] Thurber, *Examinations Before Trial Since the Goldmark Case*, 10 Bench and Bar (Aug. 1907) 52, 53, and cases therein cited.
[18] 111 App. Div. 526, 529, 97 N. Y. Supp. 1078, 1080 (1st Dep't 1906).
[19] Shonts v. Thomas, 116 App. Div. 854, 855, 102 N. Y. Supp. 324, 325 (2d Dep't 1907).
[20] Brichta v. Simon, 152 App. Div. 832, 137 N. Y. Supp. 751 (1st Dep't 1912).

ment made its position clear beyond the shadow of a doubt in the case of *Shaw* v. *Samley Realty Co., Inc.*[21] Thus, today the doctrine of the First Department that in negligence cases a general examination will not be permitted unless indispensable is a vestigial remnant of its rule with respect to all cases that existed prior to 1906, the date of the *Goldmark* case.

The Appellate Division in so interpreting the word "necessary" in the statute gives public policy as its reason. Obviously, it fears that perjury will be *en*couraged; but experience in the many other jurisdictions that permit examinations liberally, demonstrates that on the contrary perjury is thereby *dis*couraged. Moreover, as the Judicial Council states,[22] "It is difficult to see why public policy should differ in different parts of the state, particularly in the First and Second Departments." If the First Department could change its mind, as it did in 1906, with respect to commercial actions, it ought to be able to finish the job in 1943 with respect to those torts in which it refuses to allow a general examination unless it is indispensable to the examining party's proof of a cause of action or defense.

In the First Department it is not clear in what particular types of tort actions restrictions are imposed. For example, in assault actions there is a conflict in the lower courts.[23] The limitation, however, apparently covers libel,[24] slander,[25] and malpractice actions.[26] Matrimonial actions,[27] which strictly speaking, may not be considered tort actions, are also subject to this limitation. It is difficult to understand why public policy should restrict an examination in some of these types of actions.

The bar in the First Department, however, is very resourceful. It has developed at least two substitutes for the general examination before trial in negligence actions which is denied it by the Appellate Division. Small claims actions are frequently brought in the Municipal Court of the City of New York by individual plaintiffs, claiming property damage of under $50.00, as a result of which, in substance, a complete examination before trial in these cases is effected. The information thus obtained, since a small claims trial is not *res judicata*,[28] is then used by counsel to prepare for his subsequent main action for personal injuries. Also, in automobile accident cases, proceedings are taken for a hearing in the Motor Vehicle Bureau to revoke a driver's license, which likewise results in a preview of testimony as to the facts of liability and negligence. Thus, where there is a will, there is a way; but, it would be better to have a direct way.

In the First Judicial Department, judicial assistance with respect to obtaining proof is completely withheld from injured persons in these particular types of actions mentioned. Even in the Sec-

[21] 201 App. Div. 433, 194 N. Y. Supp. 531 (1st Dep't 1922).

[22] Eighth Annual Report of the Judicial Council (1942), p. 369.

[23] Andriola v. Mfrs. Trust Co., N. Y. L. J., Dec. 10, 1942, p. 1840, col. 7 (City Ct., N. Y. Co., Carlin, J.—Examination denied). Shipman v. Fairmont Theatre Corp., N. Y. L. J., June 18, 1941 (City Ct., Bronx Co., Evans, J.—Examination granted).

[24] Hermann v. Osborne Co., 128 Misc. 859, 220 N. Y. Supp. 306 (Sup. Ct., N. Y. Co. 1927).

[25] Welling v. Kugel, 215 App. Div. 770, 213 N. Y. Supp. 934 (1st Dep't 1925).

[26] Although under the general rule an examination may be denied in malpractice cases, it is often granted because of the application of the "unusual circumstances" doctrine. Daranowitz v. Burdick, 244 App. Div. 715, 279 N. Y. Supp. 973 (1st Dep't 1935—Examination denied); Goodman v. Stein, 261 App. Div. 548, 26 N. Y. Supp. (2d) 169 (1st Dep't 1941—Examination granted because of unusual circumstances).

[27] Whittaker v. Whittaker, 126 Misc. 640, 215 N. Y. Supp. 154, *affirmed* 216 App. Div. 714, 214 N. Y. Supp. 938 (1st Dep't 1926).

[28] N. Y. City Mun. Ct. Code, §186.

ond and Fourth Departments where a full examination in negligence cases is granted, it is one-sided and unfair to defendants because of the affirmative burden of proof rule. In my opinion, the right to an examination should be mutual, as in the Third Department and under the Federal Rules.

3) Examination of Municipal and Public Corporations

The principal restrictions on examination before trial, aside from the affirmative burden rule, deal with persons who may be examined; types of cases in which a general examination is permitted; and the scope or extent of the examination.

The recently enacted section 292-a of the Civil Practice Act, which permits the examination before trial of public and municipal corporations, involves all of these matters.

Under the Code of Civil Procedure, the Appellate Division in the First Department said that no examination of municipal corporations would be permitted.[29] The purported reason for this special restriction was to avoid undue annoyance and harassment of the municipal corporation's officers and employees.[30] The Court of Appeals held that under the predecessor to section 289 no examination of a municipal corporation would lie,[31] and in 1932 reaffirmed this rule.[32]

In 1935, the Judicial Council first sought to change this rule, stating:[33] "There seems no good reason if a cause of action be permitted by law to lie against a municipal corporation, why the right to examine before trial should be denied to the litigants." Judges, lawyers and litigants were unanimous in criticizing the grave injustice which often resulted from denying the right to examine municipal corporations.

The Federal Rules of Civil Procedure, adopted in 1938, permit the examination of a public corporation unless harassment is shown.[34]

In the 1939 revision of the Court of Claims Act, the Legislature provided that the state might be subject to an examination before trial in the discretion of the court.[35]

In 1940 the Appellate Division of the Third Department in *Kasitch* v. *City of Albany*,[36] a negligence action, reexamined the decisions, tried valiantly to overcome the maxim of *stare decisis*, and held that correct statutory interpretation permitted an examination before trial of a municipal corporation. The court stated:[37]

> The rule which formerly prohibited the examination of municipal corporations does not square with justice today. The law is progressive and should adapt itself to the changed and rapidly changing conditions of society. Its dominant purpose is to secure justice and not to obstruct it.

The Court of Appeals, however, reversed this decision, merely citing its previous adjudications.[38] Shortly there-

[29] Uvalde Asphalt Paving Co. v. City of New York, 149 App. Div. 491, 134 N. Y. Supp. 50 (1st Dep't 1912).

[30] Matter of Ihrig v. Williams, 181 App. Div. 865, 867, 169 N. Y. Supp. 273 (1st Dep't 1918) *aff'd*, 223 N. Y. 618, 119 N. E. 1082 (1918). *See* Diamond v. City of New York, 264 App. Div. 342, 343, 35 N. Y. Supp. (2d) 377, 378 (2d Dep't 1942).

[31] Davidson v. City of New York, 221 N. Y. 487, 116 N. E. 1042 (1917), *affirming* 175 App. Div. 969, 161 N. Y. Supp. 1006 (1st Dep't 1916).

[32] Bush Terminal Co. v. City of New York, 259 N. Y. 509, 182 N. E. 158 (1932).

[33] Second Annual Report of the Judicial Council (1936), p. 166.

[34] Joy Mfg. Co. v. City of New York, 30 Fed. Supp. 403 (D. C. So. D. N. Y. 1939).

[35] Sec. 17, subd. 2; Seventh Annual Report of the Judicial Council (1941), p. 22; Buchalter v. State, 172 Misc. 420, 421, 15 N. Y. Supp. (2d) 244, 245 (Court of Claims, 1939).

[36] 259 App. Div. 17, 18 N. Y. Supp. (2d) 140 (3d Dep't 1940).

[37] *Id.* at page 20, 143.

[38] 283 N. Y. 622, 28 N. E. (2d) 30 (1940).

after, it prohibited the examination before trial of a public corporation,[39] such as Boards of Education or the H.O.L.C.[40]

Recourse to the courts to relieve this situation having proved futile, the Legislature passed a bill in 1940 permitting the examination before trial of municipal corporations in the same manner as private corporations. Since the bill, therefore, would have permitted examination of a municipal corporation, if a party, as of right, the objection of undue annoyance and harassment had some weight. It is believed, however, that Rule 124 of the Rules of Civil Practice would have furnished proper protection.[41] At the request of municipal authorities throughout the state, the bill was vetoed by the Governor.

In the Second Department, a general examination of parties defendant before trial in negligence actions had been granted to plaintiffs almost as a matter of course. But when the city of New York took over the operation of the rapid transit system in June 1940, it was held in the Second Department that plaintiffs could not obtain examinations before trial of the city (from the transit employees) as theretofore could have been obtained of the transit corporations.[42] Thereupon,[43] the Judicial Council made a limited recommendation that an examination before trial of a municipal corporation be made available, in the discretion of the court, in actions arising out of the operation of a public utility by a municipal corporation.

The result was that a new Civil Practice Act section 292-a was added, effective May 1, 1941,[44] and an ancillary amendment was made to section 289 of the Civil Practice Act.

The new section provided that in the discretion of the court an examination before trial could be had of a municipal corporation operating a public utility. In addition to providing for a discretionary examination, new section 292-a provided significantly as follows: "Any examination granted in a negligence action shall not be limited so as to prevent or restrict the inquiry concerning the facts of negligence, liability or damages." The Judicial Council stated,[45] that this sentence "is designed to make clear that, in this type of case at least, there is no ground of public policy for refusing to permit a general examination in negligence actions. Three of the four judicial departments have so held and the practice is thus made uniform in all four departments . . ."

In *Mitchell* v. *City of New York*,[46] a negligence action brought in the Supreme Court, New York County, the plaintiff sought to examine designated subway employees. The defendant contended that the examination sought was general in character and, in view of the adjudicated cases, should not be allowed. Judge Eder held that section 292-a contemplated a larger scope of examination

[39] Rucker v. Board of Education, 284 N. Y. 346, 31 N. E. (2d) 186 (1940).

[40] Wodetzky v. Board of Education, 173 Misc. 136, 16 N. Y. Supp. (2d) 107 (City Ct. of N. Y., Queens Co. 1939). Lovero v. H.O.L.C., 172 Misc. 754, 15 N. Y. Supp. (2d) 967 (Sup. Ct., Nassau Co. 1939).

[41] See Crandall v. Ford Motor Co., 260 App. Div. 380, 22 N. Y. Supp. (2d) 929 (3d Dep't 1940).

[42] See Malshever v. Brooklyn Bus Corp., 21 N. Y. Supp. (2d) 418 (Sup. Ct., Kings Co. 1940); Martinez v. N. Y. R. T. Corp., N. Y. L. J., Sept. 7, 1940, p. 556, col. 3 (Sup. Ct., Queens Co., Kadien, J.); *Contra*: Smerling v. Brooklyn and Queens Transit Corp., 175 Misc. 154, 22 N. Y. Supp. (2d) 152 (City Ct., Kings Co. 1940).

[43] Sussman v. Murray, N. Y. L. J., Dec. 24, 1940, p. 2183, col. 3. Pecora, J., stated that the Judicial Council had the problem under consideration.

[44] Laws 1941, chapter 921.

[45] Eighth Annual Report of the Judicial Council (1942), p. 18.

[46] 178 Misc. 212, 33 N. Y. Supp. (2d) 579 (Sup. Ct., N. Y. Co. 1942), *aff'd*, 264 App. Div. 753, 35 N. Y. Supp. (2d) 266 (1st Dep't 1942).

than previously allowed, and the examination was permitted as requested. The Appellate Division of the First Department unanimously affirmed without opinion.[47]

The next year (1942) the breach was widened when section 292-a was amended to read as follows:

> Where a public corporation is a party to an action, or an original owner of a claim as provided in section two hundred and eighty-eight of this act, the court may, in its discretion, upon motion made upon notice, order that the testimony of one or more of the officers, agents or employees of said public corporation, which is material and necessary, be taken by deposition. Any such examination granted in a negligence action shall not be limited so as to prevent or restrict the inquiry concerning the facts of negligence, liability or damages.

The right to examination with respect to municipal corporations is thus rendered mutual, since municipal corporations generally are allowed to examine claimants.[48]

Except for new section 292-a no substantial amendment to examinations before trial has become law since 1920, despite annual proposals of all kinds.

The reform accomplished by section 292-a appears to be working well and justly, but the effect of section 292-a, as amended in 1942, may prove to be even broader and may accomplish a long-sought end, namely, the elimination of the restriction on examinations before trial in all negligence actions now the rule in the First Department. The sentence in the statute forbidding restrictions of the examination with respect to the facts of negligence, liability and damages, to which I have referred, was continued in the 1942 amendment. In *Huber* v. *Broadway Maintenance Corp.*,[49] Judge Evans stated that this last sentence of section 292-a changes the rule[50] that "public policy" in the First Department would not permit a general examination before trial except in "unusual circumstances" in a negligence action. This is a most significant decision, and has been followed in the Supreme Court and in other courts.[51] If the Appellate Division, First Department, should so hold, then the divergence, at least as regards examinations before trial in negligence actions, between the First Department and the other three Departments will have been eliminated.

4) The Examination of a Witness Under the "Special Circumstances" Clause

To obtain an examination of a party it need only be shown that his testimony is "material and necessary"; whereas the examination of a witness is subject to further limitations, and if the witness does not come within the specified contingencies of section 288, "special circumstances" must be shown.

The Code of Civil Procedure contained a provision[52] added in 1879, similar to the present one,[53] allowing a witness to be examined before trial under

[47] *See* footnote 46 *supra*. *Accord*, Wolk v. City of New York, 37 N. Y. Supp. (2d) 352 (City Ct., N. Y. Co. 1942).

[48] *E.g.*, N. Y. City Admin. Code, §93-d-1.0.

[49] 39 N. Y. Supp. (2d) 838 (City Ct. of N. Y., Bronx Co. 1943).

[50] Shaw v. Samley Realty Co., Inc., 201 App. Div. 433, 194 N. Y. Supp. 531 (1st Dep't 1922).

[51] *Accord*, Norwood v. Third Ave. Railroad Co., N. Y. L. J., March 31, 1943, p. 1247, col. 7 (Sup. Ct., N. Y. Co., Levy, J.). In that case the court said: "While defendant is not a public corporation, that section (292-a) is nevertheless an additional clear indication of the trend toward broadening the scope of discretion in such matters." *See also*, Froimowitz v. Third Ave. Transit Corp., N. Y. L. J., March 17, 1943, p. 1055, col. 5 (City Ct., Bronx Co., Boneparth, J.); Kelly v. Harlem Savings Bank, N. Y. L. J., Oct. 22, 1942, p. 1137, col. 4 (City Ct., Bronx Co., Evans, J.); *contra*, Arena v. Goldstein, N. Y. L. J., Oct. 8, 1941, p. 953, col. 2 (City Ct., N. Y., Byrnes, J.).

[52] Section 872, subd. 5.

[53] Section 288 of the Civil Practice Act.

"special circumstances." Under this Code provision, the Court of Appeals held that "these 'other' circumstances evidently mean such as will make the presence and evidence of the witness at the trial doubtful and uncertain, and relate to his personal condition and purposes as bearing upon the probability of his future attendance."[54]

There was a tendency on the part of the courts to read section 872, subdivision 5, of the Code of Civil Procedure in conjunction with section 882, and if the conditions under which the deposition might be read in court did not exist, to deny the motion for the examination.[55]

The idea that circumstances relied upon must be such as to justify a well-grounded apprehension, at least, that the examination of the witness could not be had upon the trial as well as before trial,[56] and that a failure of justice would result from not allowing the examination,[57] permeates all the earlier decisions and is carried over into some of the recent ones, especially in the First Department.[58] There is, however, a noticeable inclination in some of the lower courts of that Department to construe the phrase "special circumstances" more liberally.[59] The Appellate Division has not, however, indicated its approval.

In spite of the fact that the Civil Practice Act intended that the technical rules flourishing under the Code should be discarded, it is only in comparatively recent times that the courts have liberalized their interpretation of the phrase "special circumstances."[60]

The courts have not attempted to define precisely what constitutes "other special circumstances" since it is a matter of judicial discretion. The emphasis is still placed upon the availability of the witness at the trial; but examinations have been allowed in the following situations, sometimes even in the First Department: when it appears that the testimony of the witness is indispensable, for example, in an action involving the representative of a deceased[61] or incompetent person;[62] when a fiduciary relationship is involved;[63] when the witness is closely related to the acts which the party must prove;[64] or when the hostil-

[54] Town of Hancock v. The First National Bank, 93 N. Y. 82, 86 (1883).

[55] Scheff v. Lewis, 191 App. Div. 30, 180 N. Y. Supp. 831 (1st Dep't 1920); Automobile Club of America v. Canavan, 128 App. Div. 426, 112 N. Y. Supp. 785 (1st Dep't 1908); Redfield v. National Petroleum Corp., 211 App Div. 152, 206 N. Y. Supp. 827 (1st Dep't 1924).

[56] American Woolen Co. v. Altkrug, 139 App. Div. 671, 124 N. Y. Supp. 203 (1st Dep't 1910); Hill v. Bloomingdale, 136 App. Div. 651, 121 N. Y. Supp. 370 (1st Dep't 1910).

[57] Hill v. Bloomingdale, 136 App. Div. 651, 121 N. Y. Supp. 370 (1st Dep't 1910); Van Bramer v. First National Bank of Pearl River, 189 App. Div. 947, 178 N. Y. Supp. 924 (2d Dep't 1919).

[58] Redfield v. National Petroleum Corp., 211 App. Div. 152, 206 N. Y. Supp. 827 (1st Dep't 1924); Schloper v. Abramowitz, 161 Misc. 309, 291 N. Y. Supp. 661 (City Ct., Bronx Co. 1936); Kaplan v. Lincoln Fire Insurance Co. of N. Y., N. Y. L. J., March 19, 1934, p. 1319, col. 2 (City Ct., N. Y., Noonan, J.); Santoro v. Stolz, N. Y. L. J., Jan. 15, 1942, p. 225, col. 4 (Co. Ct., Westchester Co., Liddle, J.); Pardee v. The Mutual Benefit Life Ins. Co., 238 App. Div. 294, 265 N. Y. Supp. 837 (4th Dep't 1933).

[59] Sachs v. Irving Trust Co., N. Y. L. J., Sept. 8, 1939, p. 567, col. 5 (Sup. Ct. N. Y., Pecora, J.).

[60] See Notes 61 to 65 *infra*.

[61] Sax v. Houston, 264 App. Div. 904, 35 N. Y. Supp. (2d) 845 (2d Dep't 1942); Chittenden v. San Domingo Improvement Co., 132 App. Div. 169, 116 N. Y. Supp. 829 (1st Dep't 1909); George W. Warnecke & Co., Inc. v. Colcon Holding Corp., N. Y. L. J., Nov. 28, 1940, p. 1755, col. 7 (Sup. Ct., N. Y., Wasservogel, J.); *In the matter of* Dimon's Estate, 155 Misc 311, 280 N. Y. Supp. 526 (Surr. Court, Westchester Co. 1935).

[62] Bartlett v. Sanford, 244 App. Div. 722, 278 N. Y. Supp. 578 (2d Dep't 1935).

[63] Whitman v. Keiley, 58 App. Div. 92, 68 N. Y. Supp. 551 (1st Dep't 1901); Fleisher v. Leid, N. Y. L. J., Sept. 12, 1939, p. 609, col. 6 (Sup. Ct., N. Y., Pecora, J.).

[64] Laruffa v. Astarita, 264 App. Div. 785, 34 N. Y. Supp. (2d) 869 (2d Dep't 1942); Farber v. De Bruin, 253 App. Div. 909, 2 N. Y. Supp. (2d) 244 (2d Dep't 1935); De Luca v. Kerwin, 239 App. Div. 850, 264 N. Y. Supp. 968 (2d Dep't 1933); Schwartz v. Guilden, N. Y. L. J., Dec. 20, 1940, p. 2134, col. 2 (Sup. Ct., N. Y., Pecora, J.); Stevens v. Silverman, 157 Misc. 381, 283 N. Y. Supp. 744 (Mun. Ct., Manhattan, 1935).

In Manufacturers Trust Co. v. American National Fire Insurance Co., 232 App. Div. 536, 252 N. Y. Supp. 89, 90 (1st Dep't 1931) the court said, "The persons whom plaintiff sought to examine, although not parties to the action, were so related to the acts which plaintiff must prove, and the circumstances of their connection with the alleged wrongful conduct of defendants were such, that we conclude that an examination ought to have been allowed." But note that the persons sought to be examined were the employees of the defendant corporation and the individual defendant himself, and so, were examinable as parties.

ity of the witness is such as to render uncertain and doubtful his presence at the trial.[65]

a)—*The Hostile Witness Doctrine*

The Second Department, following the reasoning of the court in the *Bloede* case,[66] which was decided in 1924, greatly extended the application of section 288 by permitting the examination of a witness, if it is shown that the witness is likely to be hostile, unwilling, or reluctant.[67] It is not necessary to show that the witness will be unavailable at the trial. It is enough that the orderly procedure of the trial will be enhanced and that the examination in advance of the trial is likely to shorten and facilitate the trial itself, and to define the issues. The First Department has not, as yet, adopted this doctrine.[68] It is in this particular that the greatest divergence of opinion is found. The impact of the traditional attitude of the First Department is most keenly felt here by the practicing attorney. As a practical proposition, it appears that under the rule of the Second Department, a party would be able to examine practically any witness, as it is seldom necessary to seek by motion the examination of a friendly witness. However, as the matter rests in the sound discretion of the court, there are many conflicting decisions in the lower courts of even the liberal departments, with the result that examinations are allowed in one instance and denied in another on similar sets of facts.

b)—*A Corporation May Not Be Examined as a Witness*

Although there are a few decisions which seem to have permitted the examination before trial of a corporation which is not a party to an action, that is, as a witness,[69] nevertheless, the settled rule is that corporations, as such, may not be examined as witnesses.[70] However, if it can be shown that an agency relationship exists between the corporation sought to be examined and a party,[71] such corporation may be examined though not a party to the action. Under ordinary circumstances the best practice is to examine the officers or employees of such non-party corporations, individually as witnesses, rather than as representatives of the corporations.

[65] International Trust Co. v. Kruger, 139 Misc. 859, 248 N. Y. Supp. 507 (Sup. Ct., N. Y., 1931). See discussion on this point in the following subdivision.

[66] Bloede Co. v. Devine Co., 211 App. Div. 180, 206 N. Y. Supp. 739 (4th Dep't 1924), but note that witness involved was the employee of a corporation. *See* Loonsk Bros. v. Mednick, 246 App. Div. 464, 466, 285 N. Y. Supp. 801, 803 (4th Dep't 1935)—"However, for taking the deposition of a person, not a party, section 288 imposes the condition that such person must be aged or infirm or about to remove from the state, or living more than 100 miles away; in other words, it is the policy of the law that a person not a party should not ordinarily be annoyed by examination before trial in someone else's lawsuit unless the circumstances are such as to threaten the loss of his testimony."

[67] Favole v. Gallo, 261 App. Div. 974, 25 N. Y. Supp. (2d) 806 (2d Dep't 1941); Zirn v. Bradley, 257 App. Div. 832, 11 N. Y. Supp. (2d) 986 (2d Dep't 1939); Heidell v. George A. Murray Co., 255 App. Div. 792, 7 N. Y. Supp. (2d) 77 (2d Dep't 1938); La Bonte v. Long Island R. R. Co., 242 App. Div. 844, 275 N. Y. Supp. 109 (2d Dep't 1934); also Angell v. Booth, 169 Misc. 735, 8 N. Y. Supp. (2d) 546 (Sup. Ct., Chemung Co. 1938); Gillette v. Warren, 175 Misc. 614, 23 N. Y. Supp. (2d) 828 (Orleans Co. 1940), *aff'd*, 260 App. Div. 900, 23 N. Y. Supp. (2d) 847 (4th Dep't 1940).

[68] Roy Music Co., Inc. v. Leo Feist Inc., N. Y. L. J., March 3, 1941, p. 957, col. 5 (Sup. Ct., N. Y., Eder, J.): "It is not a 'special circumstance' that the proposed witness curtly declined to answer any questions relating to the matters involved in the notice of examination, or that he stated he would oppose the attempt to examine him. This is an ordinary circumstance, present in practically all cases where an examination is attempted; it is not a special circumstance within the meaning of the statute."

[69] Loomis v. Marsh, 215 App. Div. 691, 212 N. Y. Supp. 859 (2d Dep't 1925). The record in this case indicates that the "third party" permitted to be examined was in fact a corporation.

[70] McCULLEN, EXAMINATIONS BEFORE TRIAL (1938) 190. Chartered Bank of India v. North River Ins. Co., 136 App. Div. 646, 121 N. Y. Supp. 399 (1st Dep't 1910); Weigand v. Schmitt, 241 App. Div. 655, 269 N. Y. Supp. 221 (4th Dep't 1934).

[71] *See*, In re O'Flyn's Estate, 262 App. Div. 760, 27 N. Y. Supp. (2d) 595, 597 (2d Dep't 1941).

c)—*Agents of Individuals and Partnerships Must Be Examined as Witnesses*

A corporate party may, pursuant to express provision in section 289 of the Civil Practice Act, be examined through the officers, agents and employees, and the examination of such agents is the examination of the corporation itself. But an individual or partnership cannot be so examined, and such employees and agents must be examined individually as ordinary witnesses.[72] Consequently, the deposition of the employee of an individual may be used at the trial only when the employee is unavailable, but the deposition of the employee of a corporation may be used in the same manner as the deposition of a party.

As corporations dissolve and become partnerships in order to save heavy corporation taxes, the problems, and in some instances, the injustices imposed by this rule become increasingly important and assume greater significance. There has been some agitation to abolish this distinction between individual and partnership litigants and corporate parties.

Under the Federal Rules the deposition of an employee of a partnership is treated the same as the deposition of an employee of a corporation.

d)—*Former Employee of Corporation Must Be Made a Party or be Examined as a Witness*

The Court of Appeals, in *McGowan* v. *Eastman*,[73] held that section 289 of the Civil Practice Act was not applicable to former employees of a corporation, and that a corporation could not be examined through such former employees and agents.

Consequently, one must either join such former employees as parties to the action or examine them as witnesses where possible. Neither alternative, however, is entirely satisfactory.

The former alternative is of dubious value because of the limitations expressed in *Nixon* v. *Beacon Transportation Corp.*[74] regarding the competency of one party's testimony with respect to his co-party's liability. The alternative of examining such former employee as a witness is, of course, rendered ineffective in most cases by the necessity of showing "special circumstances" to justify the examination of witnesses.[75]

e)—*Examination of Co-Defendants as Witnesses*

Regarding the examination of co-defendants before trial, the correct practice would seem to be as follows:

When the deposition of a defendant is sought to be taken and to be used to prove the liability of his co-defendant, the taking of such deposition, as well as its use, is subject to the same restrictions which apply to the taking and the use of the depositions of ordinary witnesses.[76]

Only when a co-defendant is sought to be examined regarding his own liabil-

[72] Roberts v. Hayden, 213 App. Div. 1, 209 N. Y. Supp. 598 (3d Dep't 1925); Omar, Inc. v. May, N. Y. L. J., March 29, 1941, p. 1404, col. 5 (City Ct., N. Y., Schimmel, J.). *Contra*, Beckworth v. Green, N. Y. L. J., Sept. 27, 1940, p. 1, col. 1 (Sup. Ct., Westchester Co., Witschief, J.).

[73] 271 N. Y. 195, 2 N. E. (2d) 625 (1936).

[74] 239 App. Div. 830, 264 N. Y. Supp. 114 (2d Dep't 1933). See discussion in following subdivision.

[75] The increasingly liberal interpretation of the "special circumstances" clause of section 288 will probably remedy, partially at least, the injustices which now result from the rule that former employees of a corporation may not be examined.

[76] Nixon v. Beacon Transportation Corp., 239 App. Div. 830, 264 N. Y. Supp. 114 (2d Dep't 1933).

ity, may such examination be had and used as that of a party, that is, without a showing of "special circumstances."

5) Examination to Identify a Prospective Defendant

There is a diversity of holdings among the four Departments as to whether under Civil Practice Act, section 295, an examination may be had before the action is commenced, to identify a prospective defendant.

The Third[77] and Fourth[78] Departments follow the weight of authority in other states[79] and permit such an examination.

The First Department[80] adheres to the rule under the Code of Civil Procedure that an examination before the action is commenced is permitted only to perpetuate testimony. This rule seems unnecessarily strict in continuing to follow the pre-Civil Practice Act procedure.

Although the Second Department has not directly passed upon this point, there are indications that it leans towards the holding of the First Department.[81]

If a cause of action is assignable, it is often possible to circumvent the First Department rule by assigning the cause of action to a resident of the Third or Fourth Department.[82]

[77] Application of Cohen, 179 Misc. 6, 37 N. Y. Supp. (2d) 115 (Sup. Ct., Broome Co. 1942), *aff'd*, 265 App. Div. 1029, 38 N. Y. Supp. (2d) 925 (3d Dep't 1943). This case contains an excellent summary of the law on this subject.

[78] Lauffer v. Eastern Star Temple, 210 App. Div. 619, 207 N. Y. Supp. 292 (4th Dep't 1924).

[79] Annotation, Bill of discovery or statutory remedy for discovery available for purpose of determining who should be sued. 125 A.L.R. 861 (1940).

[80] Matter of Hufstutler, 220 App. Div. 587, 222 N. Y. Supp. 43 (1st Dep't 1927).

[81] *See* Matter of Robinson, 250 App. Div. 767, 293 N. Y. Supp. 639 (2d Dep't 1937); In the Matter of Pequeno, 177 Misc. 223, 30 N. Y. Supp. (2d) 123 (Surr. Ct., Kings Co. 1941), Surrogate Wingate specifically followed the rule in the First Department.

[82] Matter of Silverberg, 243 App. Div. 854, 278 N. Y. Supp. 1019 (4th Dep't 1935).

Procedure and Practice in Procuring and Conducting the Examination

1) Upon Whom and to What Extent is the Burden of Proving That an Examination of a Party is Material and Necessary

A matter of great importance to the practitioner is whether the party seeking an examination before trial of another party must sustain an affirmative burden of proof in regard to the materiality and the necessity of such examination. The more recent cases in the Appellate Division hold that the burden is upon the party sought to be examined rather than on the party seeking the examination, to convince the court that the examination should not be had, or in other words, that it is immaterial and unnecessary.[83]

Cases cited to support the proposition that the burden of proving the necessity and materiality of the examination of the adverse party is on the party seeking such examination do not, upon analysis, support this proposition.[84]

In view of the Appellate Division cases, it is submitted that recent lower court decisions to the contrary do not correctly state the law.[85]

[83] Vose v. Mitchell, 256 App. Div. 938, 9 N. Y. Supp. (2d) 796 (2d Dep't 1939); Murray v. The First Trust Co. of Albany, 258 App. Div. 1007, 16 N. Y. Supp. (2d) 764 (3d Dep't 1940); Loydahl v. Haglund, 260 App. Div. 900, 23 N. Y. Supp. (2d) 200 (4th Dep't 1940). See briefs on appeal in this case.

[84] Lovasz v. Fowler, 209 App. Div. 169, 204 N. Y. Supp. 308 (2d Dep't 1924); Wood v. American Locomotive Co., 246 App. Div. 376, 286 N. Y. Supp. 994 (3d Dep't 1936); McCullough v. Auditore, 215 App. Div. 89, 212 N. Y. Supp. 628 (2d Dep't 1925); Glasser v. Borglund, 248 App. Div. 898, 290 N. Y. Supp. 614 (2d Dep't 1936); Abels v. Rubin, 145 Misc. 806, 261 N. Y. Supp. 85 (Nassau Co. Ct. 1932).

The Lovasz, McCullough, and Glasser cases dealt with the examination of a witness and not a party. The Wood case does not hold that necessity and materiality require proof additional to the pleadings. The Abels case denied the examination principally on the ground that it was sought before service of defendant's answer.

[85] The case of Tremblay v. Lyon, 176 Misc. 906, 29 N. Y. Supp. (2d) 336 (Sup. Ct., Monroe Co. 1941), although it supports the rule that the burden is on the party who seeks the examination, must be deemed erroneous in view of the decision of the Appellate Division of the Fourth Department in Loydahl v. Haglund, *supra*.

2) Notice Procedure May be Used to Obtain the Examination of a Witness Under the "Special Circumstance" Clause

It has been held in the Second Department that the plaintiff may proceed simply by notice to obtain the examination of a hostile witness under the "special circumstance" clause of section 288.[86]

Moreover, most attorneys in such a situation probably will prefer to proceed by notice of motion based upon affidavit.

3) Correct Form for Specification of the Matters Upon Which the Examination is Sought

Many courts insist that a notice of examination or motion for an order must specify the matters upon which the examination is sought, as facts, in the following manner: "That defendant received one hundred dollars from plaintiff."

These courts hold the statement in the following forms to be improper:[87]

Whether or not defendant received one hundred dollars from plaintiff;

As to the receipt of one hundred dollars from plaintiff;

To prove defendant received one hundred dollars from plaintiff;

Concerning the receipt of one hundred dollars from plaintiff.

The use of conclusions of law, or the mere repetition of the language of the complaint, is also discouraged.[88]

However, if the form used is objectionable, the examination is denied without prejudice, thus causing unnecessary delay and expense.

Judge Benvenga, with good sense, has simply permitted the party seeking the examination to change the objectionable word "whether" to the word "that," thereupon granting the examination without more ado.[89]

As opposed to the lower court decisions which demand a meticulous compliance with form, reminiscent of the days of common-law practice, the Appellate Divisions of the First and Second Departments have taken a more liberal view.[90]

The above technical requirements are entirely avoided under the federal practice since thereunder the party seeking the examination need merely state generally that it is sought as to all matters, not privileged, relevant to the subject of the controversy.

4) Use of an Attorney's Affidavit

One might gather the impression from the unreported cases appearing in the *Law Journal* that an attorney's affidavit in support of a motion for examination is deemed insufficient.[91] This is erroneous. Neither the Civil Practice Act[92] nor the Rules of Civil Practice[93]

[86] President and Directors of Manhattan Co. v. Rom, 176 Misc. 200, 25 N. Y. Supp. (2d) 988 (Sup. Ct., Queens Co. 1940) *aff'd without opinion*, 261 App. Div. 841, 25 N. Y. Supp. (2d) 785 (2d Dep't 1941).

[87] Melup v. Rubber Corp. of America, N. Y. L. J., March 3, 1943, p. 847, col. 6 (Sup. Ct., N. Y. Co., O'Brien, J.); Balsam v. Finkelstein, 164 Misc. 873, 299 N. Y. Supp. 649 (Sup. Ct., Kings Co. 1937).

[88] Rausch v. Monfort, 251 App. Div. 868, 297 N. Y. Supp. 34 (2d Dep't 1937); Rogers v. Gould, 206 App. Div. 433, 201 N. Y. Supp. 535 (1st Dep't 1923).

[89] Stephens v. Arden, N. Y. L. J., Dec. 5, 1942, p. 1763, col. 4 (Sup. Ct., N. Y. Co.). *See also*, Simon v. Ellman, 40 N. Y. Supp. (2d) 79, 80 (Sup. Ct., Kings Co. 1943), *affirmed* 265 App. Div. 1009, 39 N. Y. Supp. (2d) 773 (2d Dep't 1943), in which the court found that the defendant was not "prejudiced" by the use of the form "as to the facts" and granted the examination.

[90] Kahn v. Fifth Avenue Coach Co., 257 App. Div. 360, 13 N. Y. Supp. (2d) 174 (1st Dep't 1939); Yonkers News System Laundry, Inc. v. Simon, 259 App. Div. 912, 20 N. Y. Supp. (2d) 174 (2d Dep't 1940).

[91] Kurgan v. City of N. Y., N. Y. L. J., Apr. 23, 1943, p. 1586, col. 6 (Sup. Ct., Kings Co., Cuff, J.); Teixeira v. Horne, N. Y. L. J., Apr. 2, 1943, p. 1290, col. 1 (Sup. Ct., Queens Co., Froessel, J.).

[92] Secs. 288, 289.

[93] Rule 122. Rule 122 supersedes General Rule 82, which read: "When an examination is required under sections 870, 871 and 872 of the Code of Civil Procedure, the affidavit shall specify the acts and circumstances which show conformity with subdivision 4 of section 872 that the examination of the person is material and necessary." Since neither the Code nor the Civil Practice Act specifies who is to make the affidavit, the cases under the Code are still relevant.

specify who is to make the affidavit in support of a motion for an examination before trial. Therefore the affidavit may be made by the attorney[94] for the party seeking the examination. However, if the affidavit is made by the attorney, it should either allege that it is based upon his personal knowledge or set forth the sources of his information, the grounds for his belief and the reasons why the informant himself did not make the affidavit.[95]

In many cases it would appear, as Judge Watson has held, that the attorney would be the proper person to make the affidavit as he would be in a better position to judge which facts are material and necessary and the nature of the proof required to sustain his client's case.[96]

5) Methods of Obtaining Order for Discovery and Inspection of Books and Papers

Proceedings for discovery and inspection may be initiated only by order to show cause. If, however, the production of books, records and documents is sought as incidental to or in conjunction with an examination before trial of a party or witness, the Appellate Divisions in both the First and Second Departments now definitely approve the practice of initiating the proceedings by notice of motion.[97]

There are lower court decisions holding that even though discovery and inspection proceedings are commenced by notice of motion, such defect may be disregarded.[98] However, the safer practice is to proceed by order to show cause where discovery is sought and either by notice of motion or order to show cause when discovery is requested in conjunction with an examination.

Discovery and inspection under Civil Practice Act section 324 may be obtained only of books and papers in possession or control of a party to the action, but the inspection of papers, books and records incidental to the examination before trial under section 296, may be obtained if such books are in control of a witness as well as of a party.[99]

The general rule is that papers, books and records produced pursuant to order upon an examination under Civil Practice Act section 296, may be offered in evidence upon the examination even if they are not used to refresh the witness's recollection. Furthermore, before offering such documents in evidence, the examining party may have a limited inspection thereof in order to decide whether he wishes them marked in evidence.[100]

If the examination is held pursuant to notice rather than by order, the pro-

[94] But "An attorney 'associated with' an attorney for a party has no implied authority to institute any application; the presumption of authority so far as it goes is as to the attorney of the party." Sunley v. Badler, 33 N. Y. Supp. (2d) 642 (Sup. Ct., N. Y. 1942). *See* Glasser v. Borglund, 248 App. Div. 898, 290 N. Y. Supp. 614 (2d Dep't 1936) where the attorney associated with the attorney for the defendant submitted an affidavit which was held sufficient to impose upon the moving party the burden of showing the existence of facts warranting the examination.

[95] Cooke v. New Amsterdam Real Estate Association, 85 Hun 417, 32 N. Y. Supp. 888 (Gen. T., 2d Dep't 1895).

[96] Broome v. Perlman, 178 Misc. 873, 36 N. Y. Supp. (2d) 729 (Mun. Ct., Manhattan, 1942); Reed v. Smith, 122 App. Div. 795, 107 N. Y. Supp. 893 (1st Dep't 1907).

[97] Continental Insurance Co. v. Equitable Trust Co., 137 Misc. 28, 42, 244 N. Y. Supp. 377, 393 (Sup. Ct., N. Y. Co. 1930), *aff'd*, 229 App. Div. 657, 243 N. Y. Supp. 200 (1st Dep't 1930); Saper v. National Bank of Far Rockaway, 265 App. Div. 941, 38 N. Y. Supp. (2d) 425 (2d Dep't 1942).

[98] Lapinski v. Blau Bros. Super Market, Inc., N. Y. L. J., July 18, 1942, p. 147, col. 2 (Sup. Ct., N. Y., Benvenga, J.). *Cf.* Bearor v. Kapple, 24 N. Y. Supp. (2d) 655 (Sup. Ct., Schoharie Co. 1940).

[99] Civil Practice Act, sec. 296; Rubel Corp. v. Rosoff, 251 App. Div. 868, 297 N. Y. Supp. 274 (2d Dep't 1937).

[100] Beeber v. Empire Power Corp., 260 App. Div. 68, 20 N. Y. Supp. (2d) 584 (1st Dep't 1940).

duction of books and papers may also be had by the use of a *subpoena duces tecum*. However, such records when produced are limited to refreshing the recollection of the witness.[101]

6) Cross-Examination Upon the Examination

There is no doubt that a witness called by the examining party may be cross-examined by the opposing party. Since such a witness is usually examined for the reason that he will not appear at the trial, to refuse the opposing party the right to cross-examine him at the examination before trial would amount to a complete denial of any cross-examination.

Strangely enough, it was not until 1941 that it was clearly held by Judge Collins[102] that an interrogated party may be cross-examined by his own counsel upon the examination before trial. Although there are still some doubts expressed as to this matter, it now seems quite clear that it is not only within the power of the examinee's counsel to cross-examine the interrogated party, but that it is also an obligation to his client. The deposition will be a strong weapon against his client if left to be explained away at the trial. Furthermore, there is also the possibility that the party will be unable to testify at the trial because of death or other reason.

7) Use of Deposition at the Trial

The deposition of a witness may not be read at a trial unless it is shown that the witness cannot be produced because of unavailability, either actual or as defined by Civil Practice Act section 304, whereas the deposition of a party may be read, if competent, even if the party is present in court.[103]

Only during the last two years has the law been settled that the deposition of an officer of a corporate party may also be read although the officer is present in the courtroom. The Appellate Division of the First Department in *General Ceramics Co.* v. *Schenley Products Co.*[104] in so holding, in effect overruled *Miners' and Merchants' Bank* v. *Ardsley Hall Co.*, a case dating from 1906.[105]

The other three Departments and the Federal Rules are all in accord on this point.[106]

8) Correcting the Deposition

In the Second Department, the rule is well settled under the case of *Columbia* v. *Lee*[107] that the stenographic transcript of the testimony contained in the deposition may not be corrected by deletion or by interlinear changes or corrections. Instead, the witness, before subscribing the transcript of his testimony, "may add to the foot thereof a statement that certain of his answers (indicating the

[101] N. Y. City Car Ad. Co. v. Regensburg & Sons Inc., 205 App. Div. 705, 200 N. Y. Supp. 152 (1st Dep't 1923).

[102] Reliable Textile Co., Inc. v. Elk Dye Works, Inc., 177 Misc. 926, 32 N. Y. Supp. (2d) 438 (Sup. Ct., N. Y. Co. 1941).

[103] Civil Practice Act, sec. 304; Redfield v. National Petroleum Corp., 211 App. Div. 152, 206 N. Y. Supp. 827 (1st Dep't 1924); McCullen, *op. cit.*, p. 457.

[104] 262 App. Div. 528, 529, 30 N. Y. Supp. (2d) 540 (1st Dep't 1941); Tieman v. Davies Turner & Co., Inc., 261 App. Div. 376, 25 N. Y. Supp. (2d) 608 (1st Dep't 1941); *see also*, Shapiro Bros. Factors Inc. v. Moskowitz, 33 N. Y. Supp. (2d) 67 (App. T., 1st Dep't 1941).

[105] 113 App. Div. 194, 99 N. Y. Supp. 98 (1st Dep't 1906), *aff'd without opinion*, 193 N. Y. 663, 87 N. E. 1122 (1908).

[106] Murphy v. Casella, 263 App. Div. 1001, 33 N. Y. Supp. (2d) 451 (2d Dep't 1942); Masciarelli v. Delaware and Hudson Railway Co., 178 Misc. 458, 34 N. Y. Supp. (2d) 550 (Sup. Ct., Broome Co., 1942); *see*, National Fire Ins. Co. v. Shearman, 223 App. Div. 127, 251 N. Y. Supp. 300 (4th Dep't 1928); Rule 26 (d)-(2) of the Federal Rules of Civil Procedure; Holtzoff, *Instruments of Discovery Under Federal Rules of Civil Procedure* (1942) 41 **Mich. L. Rev.** 205, 212-3; *see generally*, Harry I. Grayson, *A Problem in the Law of Examination Before Trial*, ed. page, N. Y. L. J., Aug. 17, 1939; Saul I. Radin, correspondence, N. Y. L. J., June 21, 1939, p 2864; Samuel Spevack, correspondence, N. Y. L. J., June 10, 1939, p. 2684.

[107] 239 App. Div. 849, 264 N. Y. Supp. 423 (2d Dep't 1933).

answers to which he refers) are incorrect, giving the reason therefor; either that it is an incorrect transcript, or that his present recollection of the facts is more accurate, and he may then state what his corrected answer is and give any other explanation he desires with respect to his prior answer."

This seems also to be the rule which is generally observed in the First Department, even though there are a number of Special Term decisions to the contrary.

The Appellate Division of the First Department has never squarely ruled on the point.[108] The safest course for counsel to follow in the First Department would appear to be to add corrections to the foot of the deposition giving the reasons therefor, as sanctioned in the *Columbia* case.

Conclusion

By means of liberal statutory interpretations, the courts may remedy almost all the defects in the present practice.

Failing that, the twenty-six justices of the Appellate Divisions doubtless have it in their power to do so by adopting or amending several Rules of Civil Practice, when such rules would not be inconsistent with any statute. They did this with marked advantage to the judicial process when, in 1932 and 1933, they extended summary judgment procedure in commercial and relatively noncontroversial tort cases. It is noteworthy that the summary judgment rule is based upon the same principle as examination before trial—the disclosure of evidence.

However, this desirable solution by amendment of the Rules of Civil Practice seems unlikely. Apparently, it is to the Legislature that we must look to clarify, unify, "certaintize" and make the practice a more perfect instrument of justice.

The Judicial Council has consistently advocated liberalization of the examination before trial procedure. However, the Judicial Council exhausts its power when it recommends such improvements to the Legislature and rule-making bodies. Bar associations and other interested groups, whether professional or public, must take up the cudgels for any proposal of the Council in which they believe and which meets with organized opposition in the Legislature, as has this one.

An extended examination before trial practice has been approved by all bar associations that have passed upon it. All professors of law and textbook writers, and all but a few of our judges favor it. The reported cases are full of testimonials and there is a tremendous, unorganized individual professional sentiment for its enactment. Official state bodies have recommended it; former Governor Lehman, and Governor Dewey, as a member of the New York Law Society, have endorsed it.

All these forces fighting in the public interest must not be discouraged; they must hammer away upon the anvil until the bent and broken instrument is finally fashioned into a straight, sharp and shining lance of justice.

[108] *Cf.* Van Son v. Herbst, 215 App. Div. 563, 214 N. Y. Supp. 272 (1st Dep't 1926).

CURRENT COMMENTS

Appointment of Raymond C. Lindquist

RAYMOND C. LINDQUIST has assumed the duties of Secretary and Librarian of the Public Library Commission of New Jersey. He was Librarian of the New York Law Institute.

Dr. Beardsley Writes Article

ARTHUR S. BEARDSLEY's article "Desiderata Pertaining to Selected Legal Materials of Washington" appeared in the April issue of the *Washington Law Review*.

Staff Changes at Minnesota

RICHARD L. THWING has resigned as Librarian of the University of Minnesota Law School and has been appointed to a position with the F.B.I.

EDWARD S. BADE has taken his place. He is Law Librarian and Professor of Law.

MYRTLE MOODY and MARGY CLAY have also resigned from the staff. Miss Moody has accepted a position at the Harvard Law School Library and Miss Clay, a government position in Florida. They have been replaced by Mrs. Marie Eller and Miss Marian Brewer.

Latin-American Book List

DENNIS A. DOOLEY, as Chairman of the New England Institute of Inter-American Affairs, has prepared a very interesting book list. It includes books on Latin-America for the general reader and a directory of Latin-American collections in New England libraries.

Christian N. Due Retires

CHRISTIAN N. DUE retired from his position as Assistant Law Librarian of the Connecticut State Library on June 30. He had been a member of the staff since 1908. Senate Joint Resolution 152, passed April 15, 1943, recognized his many years of faithful service. Tributes were paid to him by Chief Justice William M. Maltbie, James Brewster, State Librarian and Ralph W. Thompson, Superintendent of the State Library and Supreme Court Building. Gifts were presented to Mr. Due from each of the organizations they represented.

The Legist Suspends Publication

THE LAW LIBRARY ASSOCIATION OF GREATER NEW YORK has discontinued publication of *The Legist*. It has been very helpful to law librarians throughout the country as well as to those in New York and it will be very welcome when it reappears.

Legal Microfilm Association Elects Officers

HOBART R. COFFEY has been reelected Chairman of the Legal Microfilm Association and Jean Ashman has been elected Secretary-Treasurer. Members of the association are the law libraries of the universities of Texas, Michigan, Wisconsin, Pennsylvania, the State University of Iowa, Duke University, Indiana University, Louisiana State University and the Los Angeles County Law Library. The Briefs and Records of cases in the United States Supreme Court are being filmed for the members.

Libraries in War Areas

THE AMERICAN ASSOCIATION OF LAW LIBRARIES is cooperating with the American Library Association in the work of aiding foreign libraries whose subscriptions to American periodicals have been interrupted, or whose collections have been damaged by enemy action.

Miss Elizabeth Finley, the Chairman of the Committee on Aid to Libraries in War Areas, reminds the Association members that the chief interest is in American scholarly, technical and scientific periodicals.[1] If you have any duplicates, or other copies you ordinarily discard, of law reviews or periodicals of general interest, please save them for the use of the committee. There are storage facilities available throughout the country in case you do not have space. Miss Dorothy J. Comins, Library of Congress Annex, Study 251, Washington, 25, D. C., Executive Assistant of the American Library Association Committee, will furnish mailing labels and tell you where to send your contributions.

[1] For titles of legal periodicals particularly in demand, see 35 L. LIB. J. 161 (May 1942). Editor's note.

List of Presidential Executive Orders

MINNIE WIENER, Librarian of the Law Library of the Federal Works Agency in Washington, writes that there is an insufficient number of orders for the *List and Index of Presidential Executive Orders,* 1862-1938, to assure its publication. The May issue of the *Journal* lists the source and price at page 96. There is no index available for the orders prior to 1936. The book should be a most valuable tool.

CURRENT LEGAL PUBLICATIONS

Adams, J. T. Atlas of American history. N. Y., Scribners, 1943. 360p. (Companion work to Dictionary of American history)

Anderson, H. D. Ballots and the democratic class struggle; a study in background of political education. Stanford University, Calif., Stanford univ. pr., 1943. 377p. $4.00. 43-1815[1]

Babson, R. W. If inflation comes; what you can do about it. N. Y., Stokes, 1943. 232p. $1.35.

Book of the states, 1943-1944. Chicago, Council of state governments, 1943. 508p. $4.00. (35-27124)

Borkin, Joseph and Welsh, C. A. Germany's master plan; the story of industrial offensive. N. Y., Duell, Sloan & Pearce, 1943. 339p. $2.75. 43-2012

Cable, J. L. Loss of citizenship, denaturalization, the alien in wartime. Washington, D. C., National law bk. co., 1943. 149p. $4.00.

California. Laws, statutes, etc. 1943 Chase codes. San Francisco, Chase law bk. pub. co., 1943. 4v. $3.50 ea.; $9.00 for 4v.; $7.00, check with order.

Coordinators' cyclopedic tax service. Chicago, Coordinators' corporation, 1943. Revised monthly. $48.00.

Forsey, E. A. The royal power of dissolution of Parliament in the British commonwealth. Toronto, Oxford univ. pr., 1943. 316p. $5.00. 43-6134

Gee, E. F. The evaluation of receivables and inventories; as an integral phase of credit analysis. Cambridge, Mass., Bankers pub. co., 1943. 221p. $3.50.

Glascock, E. S. Patent law; substantive aspects. Madison, Wis., Pacot publications, 1943. 521p. $18.00.

Gt. Britain. Inter-departmental committee on social insurance and allied services. Social insurance and allied services, report by Sir Wm. Beveridge. American ed., reproduced photographically from the English ed. N. Y., Macmillan, 1942. 299p. $1.00. 42-36424

Griffith, D. M. Questions and answers on constitutional law and legal history. 3d ed. London, Sweet & Maxwell, 1943. 82p. 6s. 43-8206

[1] Library of Congress card numbers are indicated when available. Editor's note.

Harvey, R. F. Politics of this war. N. Y., Harper, 1943. 328p. $2.50. 43-2382

Ickes, H. L. Autobiography of a curmudgeon. N. Y., Reynal & Hitchcock, 1943. 350p. $3.00. 43-51100

Kimball, Marie. Jefferson, the road to glory, 1743 to 1776. N. Y., Coward-McCann, inc., 1943. 358p. $4.00. 43-6215

Kisch, Guido. American research in mediaeval legal history. N. Y., The author, 415 W. 115th st. 35p. $1.00.

Konstam, E. M. Treatise on the law of income tax. 9th ed. London, Stevens & sons, 1943. 700p. 57s 6d.

Levitt, C. H. Law of the construction industry in New York state. Rochester, N. Y., Northeastern retail lumbermens' ass'n, inc., 82 St. Paul st., 1943. 550p. $7.50. 43-3654

Louisiana. Laws, statutes, etc. Code of criminal law and procedure. Dart. 2d ed. Indianapolis, Bobbs-Merrill co., 1943. 889p. $15.00.

Lunau, Henry. Threat of Nazi law to all fundamental legal principles; address delivered at the Lawyers club, New York, May 28, 1942. (American foreign law ass'n Proceedings, no. 23) N. Y., Foreign & international bk. co., inc., 110 E. 42d st., 1942. $0.85.

McComsey, J. A. The soldier and the law. 2d ed. Harrisburg, Pa., Military service pub. co., 1943. 466p. $1.50.

Marketing laws survey. Interstate trade barriers. Washington, U. S. Govt. print. off., 1942. 244p. $0.75. (Vol. 5 of Marketing laws survey series) 43-51628

Murdoch, Angus. Boom copper; the story of the first U. S. mining boom. N. Y., Macmillan, 1943. 255p. $3.00. 43-3533

National association of state libraries. Supplement to the check list of legislative journals of the states of the United States of America. Boston, Mass., National ass'n of state libraries, 1943. $5.00.

National institute of municipal law officers, Washington, D. C. Municipalities and the law in action, 1943; a record of city legal experience covering the first year of the war; proceedings of the 1942 war conference of the Institute; ed. by Charles S. Rhyne. Washington, The Institute, 730 Jackson pl., 1943. 611p. $7.50.

O'Rourke, V. A. and Campbell, D. W. Constitution-making in a democracy: theory and practice in New York state. Baltimore, Johns Hopkins pr., 1943. 286p. $2.75.

Pocket law lexicon. 6th ed.; rev. to 1936 by G. R. Hughes. London, Stevens & sons, 1942. 344p. 10s.

Pound, Roscoe. Outlines of lectures on jurisprudence. 5th ed. Cambridge, Harvard univ. pr., 1943. 244p. $3.00.

Pound, Roscoe. Social control through law. (Indiana univ. Powell lectures on philosophy) New Haven, Yale univ. pr., 1942. 138p. $2.00. A 42-3286

Saarinen, Eliel. The city; its growth, its decay, its future. N. Y., Reinhold pub. co. 379p. $3.50.

Sastry, K. R. R. Treaties, engagements and sanads of Indian states. Allahabad, India, Sastry univ. Law dept., 1942. 316p. 15s.

Scoville, John and Sargent, Noel. Fact and fancy in the T.N.E.C. monographs; sponsored by the National ass'n of manufacturers. N. Y., 1942. 812p. $3.00. For sale by H. W. Wilson. 43-2641

Shepard's United States citations. N. Y., The Frank Shepard co., 1943. 2v. $75.00 less allowance for old editions.

Sherwood, J. F. and Niswonger, C. R. Federal tax accounting. 14th ed. Cincinnati, South-western pub. co., 1943. 507p., looseleaf. $3.85.

——— Income tax procedure for individuals. 2d ed. Cincinnati, South-western pub. co., 1943. 188p. $1.60.

Slesser, H. H. Judicial office and other matters. London, Hutchinson & co., 1943. 256p. 15s.

Smith, S. A. Forensic medicine. 8th ed. London, J. & A. Churchill, 1943. 672p. 28s.

Social defenses against crime; yearbook 1942 of the National probation association. N. Y., The ass'n, 1943. 346p. $1.25, paper; $1.75, cloth.

Sonnichsen, C. L. Roy Bean; law west of the Pecos. N. Y., Macmillan, 1943. 207p. $2.50. 43-4009

Sutherland, J. G. Statutes and statutory construction. 3d ed. by Frank E. Horack Jr. Chicago, Callaghan, 1943. 3v. $25.00. 43-9449

Tissier, Pierre. The Riom trial. Toronto, Oxford univ. pr., 1943. 216p. $2.50.

Wartime problems of state and local finance. Philadelphia, Tax institute, 135 S. 36th st., 1943. 280p. $2.50.

Where to look for your law; an alphabetical guide to current law books. 7th ed. by R. Hilary Stevens. London, Stevens & sons, 1943. 2s 6d.

Winfield, P. H. Text-book of the law of tort. 2d ed. London, Sweet & Maxwell, 1943. 744p. 35s.

CHECK LIST OF CURRENT AMERICAN STATE REPORTS, STATUTES[1] AND SESSION LAWS

Revised to July 15, 1943[2]

Publication	Dates of Regular Sessions	Source	Latest Vol. to Appear
ALABAMA			
Reports	. . .	West Pub. Co.	243
App. Reports	. . .	West Pub. Co.	30
Session laws	Quadrennial	Secretary of State	1939 Reg. & Ex.
Code, Compilation or Revision		Secretary of State	1940 Code A. 10v. with 1941 P. P.
ALASKA			
Reports	. . .	West Pub. Co.	9
Session laws	Odd years	Secretary of Territory	1943
Code, Compilation or Revision		Auditor of Alaska, Juneau	Comp. L. 1933 1v.
ARIZONA			
Reports	. . .	Bancroft, Whitney & Co.	58
Session laws	Odd years	Secretary of State	**Reg. 1941, 1st Spec. 1940 1 vol.**
Code, Compilation or Revision		Bobbs-Merrill Co.	1939 Code A. 6v. with 1943 P. P.
ARKANSAS			
Reports	. . .	Secretary of State	204
Session laws	Odd years	Secretary of State	Reg. 1941, Ex. 1939
Code, Compilation or Revision		Department of State, Little Rock	Pope's Digest 1937 A. 2v.
		Thomas Law Book Co.	1942 Cum. A. Supp.
CALIFORNIA			
Reports	. . .	Bancroft-Whitney & Co.	20 (2d)
App. Reports	. . .	Bancroft-Whitney & Co.	56 (2d)
Advance Parts	. . .	Recorder Prtg. & Pub. Co.	Weekly
Session laws	Odd years	Secretary of State	1941, incl. 1940 Extra Sessions.
Code, Compilation or Revision		Bancroft-Whitney & Co.	
		1941 Deering Civil Code 1v.	1937 Deering General Laws 2v.
		1941 Deering Civil Procedure & Probate Code 1v.	1937 Deering Constitution 1v.
		1941 Deering Penal Code 1v.	1939 Supp. to Codes & General Laws 1v.
		1937 Deering Political Code 1v.	1941 Supp. to Constitution, Codes & General Laws 1v.
		1937-1939 Deering Commissioners' Codes, 3v.	

[1] In response to suggestions from members of the A.A.L.L., the Editor has revised this Check List to include Statutory Compilations. Because of space limitations only one is listed for each state with the official set listed in preference to unofficial sets. The Editor will be glad to receive additional suggestions from members and subscribers concerning these statutory listings.

[2] With acknowledgments to the N. A. Phemister Company.

Publication	Dates of Regular Sessions	Source	Latest Vol. to Appear
CANAL ZONE			
Reports	. . .	Executive Secretary, Panama Canal, Balboa Heights, C. Z.	3
Code, Compilation or Revision		Superintendent of Documents, Washington, D. C.	1934 Code A. 1v.
		The Chief of Office, The Panama Canal, Washington	Supp. No. 1, 1938
COLORADO			
Reports	. . .	A. B. Hirshfield Press, Denver, Colo.	109
Session laws	Odd years	Secretary of State	Reg. 1941
Code, Compilation or Revision		Michie Co.	1935 Stat. 5v. 1941 Replacement v. 1 with 1942 P. P.
CONNECTICUT			
Reports	. . .	E. E. Dissell & Co., Hartford, Conn.	128
*Advance Parts	. . .	E. E. Dissell & Co., Hartford, Conn.	
Conn. Supp.	. . .	Connecticut Law Journal Pub. Co.	10
Superior Ct. Rep.	. . .	Bridgeport, Conn.	
Common Pleas Rep.	. . .	(Selected cases by Judges)	
*Conn. Law Journal	. . .	Weekly continuations	
Session laws	Odd years	State Librarian	1941
Code, Compilation or Revision		E. E. Dissell & Co., Hartford, Conn.	1930 Gen. Stat. 3v. 1931-33-35 Cum. Supp. 1v. 1937-39 Cum. Supp. 1v. 1941 Supp. 1v.
DELAWARE			
Reports	. . .	State Librarian	41
Chancery reports	. . .	State Librarian	23
Session laws	Odd years	State Librarian	1941
Code, Compilation or Revision		Delaware State Library, Dover, Del.	1935 Code 1v.
DISTRICT OF COLUMBIA			
Appeals	. . .	West Pub. Co.	75
Acts Affecting District of Columbia	. . .	John Byrne & Co.	42
Code, Compilation or Revision		Government Printing Office, Washington, D. C.	1940 Code A. 2v.
FLORIDA			
Reports	. . .	E. O. Painter Ptg. Co., De Land	150
Session laws	Odd years	Secretary of State	1941 Gen. & Spec.
Code, Compilation or Revision		Secretary of State	1941 Stat. 2v.
GEORGIA			
Reports	. . .	The Harrison Co.	194
App. Reports	. . .	The Harrison Co.	68
Session laws	Odd years	State Librarian	1941
Code, Compilation or Revision		The Harrison Co.	1933 Code 1v.
HAWAII			
Reports	. . .	Clerk of Supreme Court	35
*Advance parts	. . .	Clerk of Supreme Court	
Session laws	Odd years	Secretary of Territory	1941; 1941 Spec.
Code, Compilation or Revision		Secretary of Territory	1935 L. 1v.

* Advance parts paged to correspond with permanent edition.

Publication	Dates of Regular Sessions	Source	Latest Vol. to Appear
		IDAHO	
Reports	. . .	Bancroft, Whitney & Co.	62
Session laws	Odd years	Capital News Pub. Co.	1943
Code, Compilation or Revision		Bobbs-Merrill Co.	1932 Code 4v.
		Courtright Pub. Co., Denver	1940 Supp. 1v.
		ILLINOIS	
Reports	. . .	Edwin H. Cooke, Bloomington	381
*Advance parts	. . .	Edwin H. Cooke, Bloomington	
App. Reports	. . .	Callaghan & Co.	317
*Advance parts	. . .	Callaghan & Co.	
Court of Claims Reports	. . .	State Printer	11
Session laws	Odd years	Secretary of State	1941 2v.; 1941 Spec. in Sen. & H. J.
Code, Compilation or Revision		The Burdette Smith Co.	1943 Stat. 1v. State Bar Ed.
		INDIANA	
Reports	. . .	Secretary of State	219
App. Reports	. . .	Secretary of State	110
Session laws	Odd years	Secretary of State	1941
Code, Compilation or Revision		Bobbs-Merrill Co.	1933 Burns' Stat. A. 12v. Replacements v. 4, 8; 1943 P. P.
		IOWA	
Reports	. . .	Superintendent of Printing	231
Session laws	Odd years	Superintendent of Printing	Reg. 1941
Code, Compilation or Revision		Superintendent of Printing	1939 Code 1v.
		KANSAS	
Reports	. . .	State Librarian	154
*Advance parts	. . .	State Librarian	
Session laws	Odd years	Secretary of State	1943
Code, Compilation or Revision		Secretary of State	1935 Gen. Stat. A. 1v. 1941 Supp. 1v.
		KENTUCKY	
Reports	. . .	State Librarian	291
*Advance parts	. . .	State Librarian	
Session laws	Even years	State Librarian	1942, 1942 Ex. in 1v.
Code, Compilation or Revision		Statute Revision Commission	1942 Rev. Stat. 2v. (Vol. 2 in preparation)
		LOUISIANA	
Reports	. . .	West Pub. Co.	201
Session laws	Even years	Secretary of State	1942, 1942 Ex. in 1v.; Crim. Code 1v.
Code, Compilation or Revision		Bobbs-Merrill Co.	1939 Gen. Stat. 6v. with 1942 P. P.
		MAINE	
Reports	. . .	Southward Anthoenson Press, Portland	137
Session laws	Odd years	Book Dealers in Portland and Bangor	Reg. 1941, incl. 1940 Spec. Sess.; 1942 Spec. Sess.
Code, Compilation or Revision		Department of State	1930 Stat. 1v.
		MARYLAND	
Reports	. . .	Century Printing Co., Baltimore	180
*Advance parts	. . .	Century Printing Co., Baltimore	
Baltimore City Reports	. . .	Daily Record Pub. Co., Baltimore	v. 4 (1919-1928)
Session laws	Odd years	State Librarian	Reg. 1941
Code, Compilation or Revision		Dept. of Leg. Ref., Baltimore	1939 Code A. 2v. 1943 Supp.

* Advance parts paged to correspond with permanent edition.

Publication	Dates of Regular Sessions	Source	Latest Vol. to Appear
MASSACHUSETTS			
Reports	. . .	Wright & Potter Ptg. Co., Boston	311
Advance parts	. . .	Wright & Potter Ptg. Co., Boston	
App. Div. Reports	. . .	Lawyers' Brief & Pub. Co., Boston	7
Session laws	Odd years	Secretary of the Commonwealth	1941, 1942 Spec. in 1v.
Code, Compilation or Revision		Department of Secretary	1932 Gen. L. 3v.
MICHIGAN			
Reports	. . .	Callaghan & Co.	303
*Advance parts	. . .	Callaghan & Co.	
Session laws	Odd years	Secretary of State	1941; 1942 2 Ex. in 1v.
Code, Compilation or Revision		Secretary of State	1929 Com. L. 4v.
		Mason Pub. Co.	1940 Cum. Supp. A. 1v.
		Mason Pub. Co.	1942 Supp. 1v.
MINNESOTA			
Reports	. . .	Johnson Pub. Co., St. Paul	213
Session laws	Odd years	Secretary of State	Reg. 1941
Code, Compilation or Revision		Comr. of Administration, St. Paul	1942 Stat. 2v.
MISSISSIPPI			
Reports	. . .	E. W. Stephens Pub. Co., Columbia, Mo.	192
Session laws	Even years	Secretary of State	1942 Gen. & Loc.
Code, Compilation or Revision		Harrison Company	1930 Code A. 2v. 1938 Cum. Supp. 1v.
MISSOURI			
Reports	. . .	E. W. Stephens Pub. Co., Columbia	349
App. Reports	. . .	E. W. Stephens Pub. Co., Columbia	235
Session laws	Odd years	Secretary of State	1941; 1942 Ex.
Code, Compilation or Revision		Secretary of State	1939 Rev. Stat. 3v. Supp. 1941
MONTANA			
Reports	. . .	Bancroft, Whitney & Co.	112
Session laws	Odd years	State Publishing Co., Helena	1943
Code, Compilation or Revision		State Publishing Co., Helena	1935 Code A. 5v.
		Courtright Pub. Co.	1939 Supp. A. 1v.
NEBRASKA			
Reports	. . .	State Librarian	141
Session laws	Odd years	State Librarian	1941
Code, Compilation or Revision		Department of State	1929 Com. Stat. A. 1v.
		Supplement Printing Co., Lincoln	1941 Supp. 1v.
NEVADA			
Reports	. . .	Secretary of State	60
Session laws	Odd years	Secretary of State	1943
Code, Compilation or Revision		Bender-Moss Co., San Francisco	1929 Com. L. A. 6v. with 1931-41 Cum. Supp., 2v.
NEW HAMPSHIRE			
Reports	. . .	C. D. Hening, Lancaster, N. H., Reporter	91
*Advance parts	. . .	C. D. Hening, Lancaster, N. H.	
Session laws	Odd years	Secretary of State	1941
Code, Compilation or Revision		Secretary of State	1942 Rev. L. 3v.

* Advance parts paged to correspond with permanent edition.

Publication	Dates of Regular Sessions	Source	Latest Vol. to Appear
NEW JERSEY			
Law Reports	. . .	Soney & Sage Co.	128
Equity Reports	. . .	Soney & Sage Co.	132
Miscellaneous Reports	. . .	Soney & Sage Co.	20
Advance parts covering above	. . .	Soney & Sage Co.	
Session laws	Annual	Secretary of State	1942
Code, Compilation or Revision		Department of State	1937 Rev. Stat. 5v.
		Gann Pub. Co.	1938-39-40 Cum. Supp. 1v.; 1941-42 Cum. Supp. 1v.
NEW MEXICO			
Reports	. . .	West Pub. Co.	46
Session laws	Odd years	Secretary of State	Spec. 1940, Reg. 1941
Code, Compilation or Revision		Bobbs-Merrill	1942 Stat. A. 6v.
NEW YORK			
Reports	. . .	Williams Press, Inc., Albany	288
App. Div. Reports	. . .	Williams Press, Inc., Albany	264
N. Y. Miscellaneous	. . .	Williams Press, Inc., Albany	178
*Advance parts covering all the above	. . .	Williams Press, Inc., Albany	
State Department Reports	. . .	Publishers Ptg. Co., 207 W. 25th St., N. Y. City**	64
N. Y. State Labor Relations Board decisions	. . .	N. Y. Industrial Commissioner, 80 Centre St., N. Y. C.	4
N. Y. Supplement	. . .	West Pub. Co.	39 (2d)
*Advance parts	. . .	West Pub. Co.	42 (2d)
Session laws	Annual	Williams Press, Inc.	1942
Code, Compilation or Revision		Edward Thompson Co.	1939 Laws 4v. 1942 Cum. Supp. 2v.
NORTH CAROLINA			
Reports	. . .	Secretary of State	221
*Advance parts	. . .	Secretary of State	
Session laws	Odd years	Secretary of State	1943
Code, Compilation or Revision		The Michie Co.	1939 Code A. 1v. 1941 Supp. 1v.
NORTH DAKOTA			
Reports	. . .	Lawyers Co-op. Pub. Co.	71
Session laws	Odd years	Secretary of State	1943
Code, Compilation or Revision		Lawyers Cooperative	1913 Com. L. A. 2v. 1925 Supp. A. 1v. Revision in preparation.
OHIO			
Reports	. . .	The F. J. Heer Printing Co., Columbus	140
App. Reports	. . .	The F. J. Heer Printing Co., Columbus	69
*Advance Reports	. . .	Ohio State Bar Ass'n, Columbus	
Ohio Opinions	. . .	W. H. Anderson Co., Cincinnati	25
*Advance Reports	. . .	Ohio Law Rep. Co., Cincinnati	
Ohio Supp.	. . .	West Pub. Co.	**6**
*Advance Reports	. . .	West Pub. Co.	
Session laws	Odd years	Secretary of State	Reg. 1941
Code, Compilation or Revision		Banks-Baldwin Law Pub. Co.	1940 Throckmorton's Code A. 1v.
OKLAHOMA			
Reports	. . .	Times Jour. Pub. Co., Oklahoma City	190

* Advance parts paged to correspond with permanent edition.
** **Orders must be placed with N. Y. State Division of the Budget, Albany, N. Y**

Publication	Dates of Regular Sessions	Source	Latest Vol. to Appear
OKLAHOMA—Continued			
Criminal Reports	. . .	Cooperative Pub. Co., Guthrie, Okla.	74
Session laws	Odd years	Cooperative Pub. Co., Guthrie, Okla.	1941
Code, Compilation or Revision		West Pub. Co.	1941 Official Stat. 1v.
OREGON			
Reports	. . .	Bancroft, Whitney & Co.	168
Session laws	Odd years	Secretary of State	1943
Code, Compilation or Revision		Bancroft, Whitney & Co.	1940 Com. L. A. 10v. with 1942 P. P.
PENNSYLVANIA			
State Reports	. . .	Geo. T. Bisel & Co., Philadelphia	345
Superior Ct. Reports	. . .	Geo. T. Bisel & Co., Philadelphia	149
District and County Reports	. . .	Legal Intelligencer, Philadelphia	44
Advance parts of all the above	. . .	Legal Intelligencer, Philadelphia	
Session laws	Odd years	Bureau of Publication	1941, 1940 Ex. in 1v.; 1942 Ex.
Code, Compilation or Revision		West Pub. Co.	1936 Purdon's Stat. 1v.
PHILIPPINES			
Reports	. . .	Bureau Insular Affairs, Washington	63
Commonwealth Statutes	. . .	Dept. of Interior	1935-37 Vol. 1
Code, Compilation or Revision		Lawyers Coop. Pub. Co.	1930 Penal Code 2v. 1932 Supp. 1v.
		Lawyers Coop. Pub. Co.	1925 Code of Civil Proc. 1v.
PUERTO RICO			
Reports	. . .	Dept. of Interior, Washington	53
Advance parts	. . .	Secretary-Reporter, San Juan	
Session laws	Annual	Dept. of Interior, Washington	1942
Code, Compilation or Revision		Dept. of Interior, Washington	1930 Civil Code
RHODE ISLAND			
Reports	. . .	State Librarian	67
Superior Ct. Decisions	. . .	Pub. by R. I. Law Record, Providence	12
Acts and Resolves	Annual	State Librarian	1942
Public laws	Annual	State Librarian	1942
Code, Compilation or Revision		Secretary of State	1938 Gen. L. A. 2v.
SOUTH CAROLINA			
Reports	. . .	R. L. Bryan, Columbia	199
*Advance parts	. . .	R. L. Bryan, Columbia	
Session laws	Annual	State Library	1942
Code, Compilation or Revision		Code Commissioner	1942 Code A. 5v.
SOUTH DAKOTA			
Reports	. . .	State Pub. Co., Pierre	67
Session laws	Odd years	Secretary of State	1943
Code, Compilation or Revision		Secretary of State	1939 Code A. 4v.

* Advance parts paged to correspond with permanent edition.

Publication	Dates of Regular Sessions	Source	Latest Vol. to Appear
TENNESSEE			
Reports	. . .	E. W. Stephens Pub. Co., Columbia, Mo.	178
Court of Appeals	. . .	E. W. Stephens Pub. Co., Columbia, Mo.	24
Session laws	Odd years	Printing Dept., Tenn. Industrial School, Nashville	1943 Pub. 1941 Priv.
Code, Compilation or Revision		Michie Co.	1938 Code A. 1v. 1939-40 and 1941 pamphlet supp.
TEXAS			
Reports	. . .	Hicks-Gastom Co., Dallas	139
Criminal Reports	. . .	Hicks-Gastom Co., Dallas	144
Session laws	Odd years	Secretary of State	1941; 1941 Called
Code, Compilation or Revision		Vernon Law Book Co.	1936 Stat. 1v. 1939 Cum. Supp. 1v. 1942 Supp. 1v.
UNITED STATES			
Reports, Official	. . .	Government Printing Office	316
*Advance parts	. . .	Government Printing Office	318
Reports L. Ed.	. . .	Lawyers Co-op. Pub. Co.	86
Advance parts	. . .	Lawyers Co-op. Pub. Co.	87
Sup. Ct. Rep.	. . .	West Pub. Co.	62
*Advance parts	. . .	West Pub. Co.	63
Att'y. Gen. Opinions	. . .	Government Printing Office	39
*Advance parts	. . .	Government Printing Office	40
Aviation reports	. . .	U. S. Aviation Reports, Inc., Baltimore	1942
Civil Aeronautics Dec.	. . .	Government Printing Office	1
Court of Claims	. . .	Government Printing Office	96
Comptroller Gen. Dec.	. . .	Government Printing Office	21
*Advance parts	. . .	Government Printing Office	22
Customs Court Reports	. . .	Government Printing Office	8
Customs and Patent Appeals: Customs	. . .	Government Printing Office	29
(same): Patents	. . .	Government Printing Office	29
Fed. Anti-Trust Dec.	. . .	Government Printing Office	12
Fed. Com. Com. Rep.	. . .	Government Printing Office	7
Fed. Power Com. Rep.	. . .	Government Printing Office	1
Federal Reporter	. . .	West Pub. Co.	133 (2d)
*Advance parts	. . .	West Pub. Co.	135 (2d)
Federal Supp.	. . .	West Pub. Co.	48
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